

FEDERAL REGISTER

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SCORE SHEET

Sec. 52.1264 Score sheet for canned grapefruit and orange for salad.

AUTHORITY: §§ 52.1251 to 52.1264 issued under secs. 202-208, 60 Stat. 1087, as amended; 7 U.S.C. 1621-1627.

PRODUCT DESCRIPTION AND GRADES

§ 52.1251 Product description.

Canned grapefruit and orange for salad, commonly known as canned citrus salad, is prepared from sound, mature grapefruit (*Citrus paradisi*) and sound, mature oranges of the orange group (*Citrus sinensis*) which have been properly washed; the segments thereof have been separated; and the core, seeds, and major portions of membrane have been removed. The product is packed with or without the addition of water, juice, nutritive sweetening ingredients, or artificial sweetening ingredients and other ingredients permissible under the Federal Food, Drug, and Cosmetic Act; and is sufficiently processed by heat to assure preservation of the product in hermetically sealed containers.

§ 52.1252 Grades of canned grapefruit and orange for salad.

(a) "U.S. Grade A" (or "U.S. Fancy") is the quality of canned grapefruit and orange for salad (1) of which the weight of the drained orange fruit is not less than 37½ percent nor more than 60 percent of the drained weight of the product; (2) that has a drained weight of not less than 56.25 percent of the capacity of the container; (3) of which not less than 75 percent of the weight of each fruit consists of practically whole segments; (4) that has a good color; (5) that is practically free from defects; (6) that has a good character; (7) that has a good flavor and odor; and (8) that scores not less than 90 points when scored in accordance with the scoring system outlined in this subpart.

(b) "U.S. Grade B" (or "U.S. Choice") is the quality of canned grapefruit and orange for salad (1) of which the weight of the drained orange fruit is not less than 32½ percent nor more than 60 percent of the drained weight of the product; (2) that has a drained weight of

(Continued on p. 459)

CONTENTS

Agricultural Marketing Service	Page
Proposed rule making:	
Milk in Duluth-Superior marketing area; decision on proposed amendments to tentative agreement and order.....	500
Raisins produced from raisin variety grapes grown in California; proposed expenses and assessment rate of Raisin Administrative Committee for 1959-60 crop year.....	515
Rules and regulations:	
Milk in certain marketing areas; orders amending orders:	
Philadelphia, Pa.....	472
Southern Michigan.....	463
U.S. Standards:	
Grapefruit and orange for salad, canned.....	457
Orange juice, canned.....	461
Agriculture Department	
See Agricultural Marketing Service; Commodity Stabilization Service.	
Atomic Energy Commission	
Notices:	
Carolinas Virginia Nuclear Power Associates, Inc.; hearing on application for construction permit.....	522
Civil Aeronautics Board	
Notices:	
Hearings, etc.:	
Nonpriority mail rate case....	523
Northern Consolidated Airlines, Inc.....	523
Civil and Defense Mobilization Office	
Notices:	
Appointees' statements of business interests:	
Jameson, Minor S., Jr.....	522
Nelson, Otto L.....	522
Commerce Department	
See also Federal Maritime Board.	
Notices:	
Bluestone, Max Larry; changes in financial interests.....	522
Commodity Stabilization Service	
Notices:	
Tobacco, cigar binder and filler; referenda.....	520

Title 7—AGRICULTURE

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

Subpart—United States Standards for Grades of Canned Grapefruit and Orange for Salad¹

Pursuant to the authority contained in the Agricultural Marketing Act of 1946 (secs. 202-208, 60 Stat. 1087, as amended; 7 U.S.C. 1621-1627) the United States Standards for Grades of Canned Grapefruit and Orange for Salad (7 CFR, §§ 52.1251-52.1264) are hereby revised as follows:

PRODUCT DESCRIPTION AND GRADES

- Sec. 52.1251 Product description.
52.1252 Grades of canned grapefruit and orange for salad.

LIQUID MEDIA AND FILL OF CONTAINER

- 52.1253 Recommended designation of liquid media and Brix measurements when packed in sirup.
52.1254 Recommended fill of container.

FACTORS OF QUALITY

- 52.1255 Ascertaining the grade of a sample unit.
52.1256 Ascertaining the rating for the factors which are scored.
52.1257 Drained weight.
52.1258 Wholeness.
52.1259 Color.
52.1260 Defects.
52.1261 Character.

EXPLANATIONS OF TERMS

- 52.1262 Explanations of terms.

LOT INSPECTION AND CERTIFICATION

- 52.1263 Ascertaining the grade of a lot.

¹ Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act or with applicable State laws and regulations.



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CONTENTS—Continued

Commodity Stabilization Service—Continued	Page
Rules and regulations:	
Rice; results of marketing quota referendum, 1960-61 marketing year.....	462
Tobacco, cigar filler and binder; national marketing quotas.....	461
Defense Department	
Rules and regulations:	
Medical care for dependents of members of the uniformed services.....	497
Salaries and personnel practices applicable to teachers, certain school officers, and other employees of the overseas dependents' schools of the Department of Defense.....	473

CONTENTS—Continued

Federal Aviation Agency	Page
Proposed rule making:	
Coded jet routes:	
Modification.....	518
Revocation.....	518
Control zone; modification.....	517
Federal airway; modification.....	516
Federal airways and control areas:	
Modifications (2 documents).....	516, 517
Revocation.....	516
Rules and regulations:	
Airworthiness directive; Boeing.....	473
Minimum en route IFR altitudes; miscellaneous alterations.....	474
Federal Communications Commission	
Notices:	
Hearings, etc.:	
Bakersfield Broadcasting Co. (KBK-TV).....	523
Creek County Broadcasting Co. et al.....	524
Felt, Lawrence W., and International Good Music, Inc.....	524
Hardin, Jerry L.....	524
Mile High Stations, Inc.....	524
Oare, Robert L., and Mary Morris.....	525
Radio Americas Corp. (WO-RA).....	525
Federal Maritime Board	
Notices:	
Cuba, Mexico, and West Indies Steamship Co., Inc., et al.; agreement filed for approval.....	520
Hearings, etc.:	
Japan, Korea, Okinawa trade.....	521
North Atlantic / Spanish trade.....	521
South African trade.....	520
West Coast South America trade.....	520
Federal Power Commission	
Notices:	
Hearings, etc.:	
El Paso Natural Gas Co. et al.....	526
Panhandle Eastern Pipe Line Co.....	526
Phillips Petroleum Co.....	526
Tennessee Gas Transmission Co. et al.....	527
Federal Trade Commission	
Rules and regulations:	
Prohibited trade practices:	
Belber Trunk & Bag Co. et al.....	478
Empire Fur Co.....	477
National School of Chemistry.....	478
Interior Department	
See Land Management Bureau.	
Internal Revenue Service	
Proposed rule making:	
Radio and television sets, phonographs, phonograph records, and musical instrument records.....	516
Rules and regulations:	
Income tax; taxable years beginning after Dec. 31, 1953; natural resources.....	482

CONTENTS—Continued

Interstate Commerce Commission	Page
Notices:	
Fourth section applications for relief.....	529
Motor carrier transfer proceedings.....	529
St. Louis-San Francisco Railway Co.; vacation of traffic rerouting order.....	529
Labor Department	
See Wage and Hour Division.	
Land Management Bureau	
Notices:	
Proposed withdrawal and reservation of lands:	
Alaska.....	519
California; amendment and partial termination.....	519
California; for use by Bureau of Sport Fisheries and Wildlife in connection with Havasu Lake National Wildlife Refuge.....	519
Rules and regulations:	
Mineral lands; miscellaneous amendments.....	500
Post Office Department	
Rules and regulations:	
Mail deposit and collection.....	499
Railroad Retirement Board	
Rules and regulations:	
Employees' benefits; miscellaneous amendments.....	479
Securities and Exchange Commission	
Notices:	
Hearings, etc.:	
Commonwealth Mining Company of South Dakota.....	529
Skiatron Electronics and Television Corp.....	528
Small Business Administration	
Notices:	
Disaster areas:	
Kentucky.....	528
Massachusetts.....	528
Minnesota.....	528
Treasury Department	
See also Internal Revenue Service.	
Notices:	
Order of succession of persons to act as Treasurer of U.S.....	518
Wage and Hour Division	
Rules and regulations:	
Liquefied-petroleum-gas dealers; application of exemption.....	497
CODIFICATION GUIDE	
A numerical list of the parts of the Code of Federal Regulations affected by documents published in this issue. Proposed rules, as opposed to final actions, are identified as such.	
A Cumulative Codification Guide covering the current month appears at the end of each issue beginning with the second issue of the month.	
	Page
5 CFR	
601.....	473
7 CFR	
52 (2 documents).....	457, 461
723.....	461

CODIFICATION GUIDE—Con.

7 CFR—Continued	Page
730.....	462
924.....	463
961.....	472
Proposed rules:	
954.....	500
989.....	515
14 CFR	
507.....	473
610.....	474
Proposed rules:	
600 (4 documents).....	516, 517
601 (4 documents).....	516, 517
602 (2 documents).....	518
16 CFR	
13 (3 documents).....	477, 478
20 CFR	
237.....	479
26 (1954) CFR	
1.....	482
Proposed rules:	
48.....	516
29 CFR	
779.....	497
32 CFR	
56.....	497
39 CFR	
43.....	499
43 CFR	
70.....	500
71.....	500
191.....	500
193.....	500
200.....	500

not less than 53.12 percent of the capacity of the container; (3) of which not less than 50 percent of the drained weight of each fruit consists of practically whole segments; (4) that has a reasonably good color; (5) that is reasonably free from defects; (6) that has a reasonably good character; (7) that has a fairly good flavor and odor; and (8) that scores not less than 80 points when scored in accordance with the scoring system outlined in this subpart.

(c) "U.S. Broken" is the quality of canned grapefruit and orange for salad (1) of which the weight of the drained orange fruit is not less than 32½ percent nor more than 60 percent of the drained weight of the product; (2) that has a drained weight of not less than 53.12 percent of the capacity of the container; (3) of which less than 50 percent of the drained weight of either or both fruits consist of practically whole segments; (4) that has a reasonably good color; (5) that is reasonably free from defects; (6) that has a reasonably good character; (7) that has a fairly good flavor and odor; and (8) that scores not less than 70 points when scored in accordance with the scoring system outlined in this subpart.

(d) "Substandard" is the quality of canned grapefruit and orange for salad that fails to meet the requirements of U.S. Grade B and U.S. Broken.

LIQUID MEDIA AND FILL OF CONTAINER

§ 52.1253 Recommended designations of liquid media and Brix measurements when packed in sirup.

(a) "Cut-out" requirements for liquid media in canned grapefruit and orange for salad are not incorporated in the grades of the finished product since sirup or any other liquid medium, as such, is not a factor of quality for the purposes of these grades. It is recommended that the product, when packed in sirup, have the following indicated "cut-out" Brix measurement for the respective designation:

Sirup designation:	Brix measurement
Heavy	18 degrees or more.
Light	16 degrees or more, but less than 18 degrees.
Slightly sweetened water.	12 degrees or more, but less than 16 degrees.

(b) These recommendations are not applicable to the canned product packed in water, fruit juice, or with artificial sweeteners.

§ 52.1254 Recommended fill of container.

The recommended fill of container is not incorporated in the grades of the finished product since fill of container, as such, is not a factor of quality for the purposes of these grades. It is recommended that each container of canned grapefruit and orange for salad be filled with the product as full as practicable without impairment of quality and that the product and packing medium occupy not less than 90 percent of the volume of the container.

FACTORS OF QUALITY

§ 52.1255 Ascertaining the grade of a sample unit.

(a) *General.* In addition to considering other requirements outlined in the standards, the following quality factors are evaluated in ascertaining the grade of a sample unit:

(1) Factors not rated by score points—

(i) *Percentage of orange fruit.* Whenever more than one container of the product is being graded, compliance with this requirement may be based on the average weight of the drained orange fruit provided that the weight of drained orange fruit in no single container is less than 25 percent or more than 75 percent of the drained fruit in such container. It is recommended that the number of orange units be not less than the number of grapefruit units.

(ii) *Flavor and odor—*(a) "Good flavor and odor" means that the product has a distinct and normal flavor and odor typical of canned grapefruit and orange and is free from objectionable flavors and objectionable odors of any kind.

(b) "Fairly good flavor and odor" means that the product may be lacking in good flavor and odor but is free from objectionable flavors and objectionable odors of any kind.

(2) *Factors rated by score points.* The relative importance of each factor which is scored is expressed numerically on the scale of 100. The maximum number of points that may be given such factors are:

Factors:	Points
Drained weight.....	20
Wholeness.....	20
Color.....	20
Defects.....	20
Character.....	20
Total score.....	100

§ 52.1256 Ascertaining the rating for the factors which are scored.

The essential variations within each factor which is scored are so described that the value may be ascertained for each factor and expressed numerically. The numerical range within each factor which is scored is inclusive. (For example, "18 to 20 points" means 18, 19, or 20 points.)

§ 52.1257 Drained weight.

(a) *General.* The drained weight of canned grapefruit and orange for salad is determined by emptying the contents of the container upon a U.S. Standard No. 8 circular sieve of proper diameter containing 8 meshes to the inch (0.0937-inch, ±3 percent, square openings) so as to distribute the product evenly, inclining the sieve slightly to facilitate drainage, and allowing to drain for two minutes. The drained weight is the weight of the sieve and the fruit less the weight of the dry sieve. The fruit thus drained is referred to in this subpart as "drained fruit" or "drained weight." A sieve 8 inches in diameter is used for the equivalent of No. 3 size cans (404 x 414) and smaller, and a sieve 12 inches in diameter is used for containers larger than the equivalent of the No. 3 size can. "Capacity of the container" means the weight of distilled water at 68 degrees Fahrenheit which the sealed container will hold.

(b) (A) *classification.* Canned grapefruit and orange for salad that has a drained weight of not less than 56.25 percent of the capacity of the container may be given a score of 18 to 20 points as indicated in Table I. Whenever more than one container of the product is being graded and the average drained weight of the containers indicates a score in this classification, the score point indicated by such average drained weight is assigned to each container: Except that, if the drained weight of any individual container indicates a score of less than 16 points each container will be assigned the score for its own drained weight.

(c) (1) (B) *classification.* If the drained weight of the canned grapefruit and orange for salad is less than 56.25 percent, but not less than 53.12 percent of the capacity of the container, a score of 16 or 17 points may be given as indicated in Table I. Canned grapefruit and orange for salad that falls into this classification shall not be graded above U.S. Grade B, or above U.S. Broken, regardless of the total score for the product. (This is a limiting rule.)

(2) Whenever more than one container of the product is being graded and the average drained weight indicates a score in this classification the score indicated for such average drained weight is assigned to each container: Except that, if the drained weight of any in-

dividual container indicates a score of less than 14 points each container will be assigned the score for its own drained weight.

(d) (*SStd.*) classification. Canned grapefruit and orange for salad that fails to meet the requirements of paragraph (c) of this section may be given a score of 0 to 15 points and shall not be graded above Substandard, regardless of the total score for the product. (This is a limiting rule.)

TABLE I—SCORE FOR DRAINED WEIGHTS

U.S. grade	Score point	Minimum percent—age dr. wt. is of cap. of container	Minimum drained weight for specified containers, ounces ¹	8 Z (211 x 304) 8.65 oz.	No. 303 (303 x 406) 16.85 oz.	No. 2 (307 x 409) 20.5 oz.	No. 3 cyl. (404 x 700) 51.655 oz.
A-----	20	59.3	5.15	10.00	12.15	30.65	
	19	57.8	5.00	9.75	11.85	29.85	
	18	56.25	4.85	9.50	11.55	29.05	
B or broken....	17	54.7	4.75	9.20	11.20	28.25	
	16	53.12	4.60	8.95	10.90	27.45	
SStd.-----	15	51.5	4.45	8.70	10.55	26.60	
	14	50.0	4.35	8.45	10.25	25.85	
	(2)	(2)	(2)	(2)	(2)	(2)	

¹ Rounded to nearest 5/100 ounce.

² 13 or less.

³ Less than 50.

⁴ Less than the foregoing drained weight.

§ 52.1258 Wholeness.

(a) *General.* A "practically whole segment" means (1) any fruit segment that is substantially intact and retains its apparent original conformation, or (2) any portion of a segment that is not less than 75 percent of its apparent original size and is not excessively trimmed.

(b) (*A*) classification. Canned grapefruit and orange for salad that consists of not less than 75 percent by weight of each drained fruit ingredient in practically whole segments may be given a score of 18 to 20 points.

(c) (*B*) classification. If less than 75 percent but not less than 50 percent by weight of either or both of the drained fruit ingredients is in practically whole segments a score of 16 or 17 points may be given. Canned grapefruit and orange for salad that falls into this classification shall not be graded above U.S. Grade B, regardless of the total score for the product. (This is a limiting rule.)

(d) (*Broken*) classification. If less than 50 percent by weight of either or both of the drained fruit ingredients is in practically whole segments a score of 0 to 15 points may be given. Canned grapefruit and orange for salad that falls into this classification shall not be graded above U.S. Broken, regardless of the total score for the product. (This is a limiting rule.)

§ 52.1259 Color.

(a) (*A*) classification. Canned grapefruit and orange for salad that has a good color may be given a score of 18 to 20 points. "Good color" means (1), with respect to the grapefruit, a practically uniform, bright, typical color free from any noticeable tinge of amber, and (2), with respect to the orange fruit, a prac-

tically uniform, bright, typical orange color.

(b) (*B*) classification. If the canned grapefruit and orange for salad has a reasonably good color a score of 16 or 17 points may be given. Canned grapefruit that falls into this classification shall not be graded above U.S. Grade B, regardless of the total score for the product. (This is a limiting rule.) "Reasonably good color" means (1), with respect to grapefruit, a fairly bright color which may be variable but is not off color for any reason, and (2), with respect to the orange fruit, at least a fairly bright, typical orange color which may be variable.

(c) (*SStd.*) classification. Canned grapefruit and orange for salad that fails to meet the requirements of paragraph (b) of this section may be given a score of 0 to 15 points and shall not be graded above Substandard, regardless of the total score for the product. (This is a limiting rule.)

§ 52.1260 Defects.

(a) *General.* The factor of defects refers to the degree of freedom from harmless extraneous material, from seeds, from portions of albedo, from portions of tough membrane, from damaged units, and other similar defects.

(1) "Harmless extraneous material" means leaves, portions of leaves, small pieces of peel, and other similar material that is harmless.

(2) "Seed" means any seed or any portion thereof, whether or not fully developed, that measures more than $\frac{3}{16}$ inch in any dimension. A "large seed" is one that measures more than $\frac{3}{8}$ inch in any dimension.

(3) "Damaged unit" means any grapefruit or orange segment or portion thereof that is damaged by lye peeling, by discoloration, or by similar injury or that is otherwise damaged to such an extent that the appearance or eating quality of the unit is seriously affected.

(b) (*A*) classification. Canned grapefruit and orange for salad that is practically free from defects may be given a score of 18 to 20 points. "Practically free from defects" means that any defects present do not more than slightly affect the appearance or edibility of the product, and specifically that:

(1) No harmless extraneous material is present;

(2) Not more than 5 percent by weight of the drained fruit may be damaged units, and

(3) That for each 20 ounces of net weight there may be present:

(i) Not more than 4 seeds including not more than one large seed, and

(ii) Not more than an aggregate area of two-square inches on the units covered by tough membrane or albedo.

(c) (*B*) classification. If the canned grapefruit and orange for salad is reasonably free from defects a score of 16 or 17 points may be given. Canned grapefruit and orange for salad that falls into this classification shall not be graded above U.S. Grade B, regardless of the total score for the product. (This is a limiting rule.) "Reasonably free from defects" means that any defects present do not

materially detract from the appearance or edibility of the product, and specifically that:

(1) Not more than 15 percent by weight of the drained fruit may be damaged units, and

(2) That for each 20 ounces of net weight there may be present:

(i) Not more than one small piece of harmless extraneous material;

(ii) Not more than 12 seeds including not more than three large seeds; and

(iii) Not more than an aggregate area of 3-square inches on the units covered by tough membrane or albedo.

(d) (*SStd.*) classification. Canned grapefruit and orange for salad that fails to meet the requirements of paragraph (c) of this section may be given a score of 0 to 15 points and shall not be graded above Substandard, regardless of the total score for the product. (This is a limiting rule.)

§ 52.1261 Character.

(a) *General.* The factor of character refers to the structure and condition of the cells of the grapefruit and orange and reflects the maturity of the fruits.

(b) (*A*) classification. Canned grapefruit and orange for salad that has a good character may be given a score of 18 to 20 points. "Good character" means that the fruit is moderately firm and fleshy; that the segments or portions thereof possess a juicy, cellular structure free from dry cells, or "ricey" cells, or fibrous cells that materially affect the appearance or eating quality of the product; and that the product is reasonably free from loose floating cells.

(c) (*B*) classification. If the canned grapefruit and orange for salad has a reasonably good character a score of 16 or 17 points may be given. Canned grapefruit that falls into this classification shall not be graded above U.S. Grade B, regardless of the total score for the product. (This is a limiting rule.) "Reasonably good character" means that the fruit may be affected, but not seriously so, by dry cells, "ricey" cells, or fibrous cells that detract from the appearance or eating quality of the product.

(d) (*SStd.*) classification. Canned grapefruit and orange for salad that fails to meet the requirements of paragraph (c) of this section may be given a score of 0 to 15 points and shall not be graded above Substandard, regardless of the total score for the product. (This is a limiting rule.)

EXPLANATIONS OF TERMS

§ 52.1262 Explanations of terms.

(a) "Brix" means the degrees Brix of the liquid media surrounding the canned grapefruit and orange for salad when tested with a Brix hydrometer calibrated at 20 degrees C. (68 degrees F.). If the liquid media is tested at a temperature other than 20 degrees C. (68 degrees F.) the applicable temperature correction shall be made to the reading of the scale as prescribed in the "Official Methods of Analysis of the Association of Official Agricultural Chemists." The degrees Brix of the liquid media may be deter-

mined by any other method which gives equivalent results.

LOT INSPECTION AND CERTIFICATION

§ 52.1263 Ascertaining the grade of a lot.

The grade of a lot of canned grapefruit and orange for salad covered by these standards is determined by the procedures set forth in the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products (§§ 52.1 through 52.87).

SCORE SHEET

§ 52.1264 Score sheet for canned grapefruit and orange for salad.

Size and kind of container.....	.....	.....
Container mark or identification.....	.....	.....
Label.....	.....	.....
Net weight (ounces).....	.....	.....
Vacuum (inches).....	.....	.....
Drained weight (ounces).....	.....	.....
Brix measurement.....	.....	.....
Strip designation (heavy, light, etc.).....	.....	.....
Count (whole segments or almost whole segments).....	.....	.....
Factors		
Score points		
Drained weight.....	20	(A) 18-20 (B) (BKN) 16-17 (SSTD.) 10-15
Wholeness.....	20	(A) 18-20 (B) 16-17 (Broken) 10-15
Color.....	20	(A) 18-20 (B) (BKN) 16-17 (SSTD.) 10-15
Defects.....	20	(A) 18-20 (B) (BKN) 16-17 (SSTD.) 10-15
Character.....	20	(A) 18-20 (B) (BKN) 16-17 (SSTD.) 10-15
Total score.....	100	
Flavor and odor.....	{ }	Good.....
Grade.....	{ }	Fairly good.....

¹ Indicates limiting rule.

Notice of proposed rule making, public procedure thereon, and the postponement of the effective date of this revision for 30 days, or any lesser period, after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) are impractical, unnecessary, and contrary to the public interest in that:

(1) The 1960 processing season for canned grapefruit and orange for salad is imminent and it is necessary for the purposes of inspection and marketing that these revised standards be made effective at the beginning of the processing season;

(2) The revised standards are based on data developed in cooperation with the producing industry pursuant to the request of the principal producers of canned grapefruit and orange for salad;

(3) The producing industry is well aware of the requirements of the revised standards and no special preparation for compliance therewith will be required.

The United States Standards for Grades of Canned Grapefruit and Orange for Salad (which is the second issue) contained in this subpart shall become effective upon publication in the FEDERAL REGISTER, and will thereupon supersede the United States Standards for Grades of Canned Grapefruit and Orange for Salad (7 CFR §§ 52.1251-

52.1264) which have been in effect since August 7, 1950.

Dated: January 15, 1960, to become effective upon publication in the FEDERAL REGISTER.

ROY W. LENNARTSON,
Deputy Administrator,
Marketing Services.

[F.R. Doc. 60-603; Filed, Jan. 20, 1960;
8:54 a.m.]

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

Subpart—United States Standards for Grades of Canned Orange Juice ¹

PRODUCT DESCRIPTION

Pursuant to the authority contained in the Agricultural Marketing Act of 1946 (secs. 202-208, 60 Stat. 1087, as amended; 7 U.S.C. 1621-1627), the United States Standards for Grades of Canned Orange Juice (7 CFR §§ 52.1551-52.1562) are hereby amended as follows:

Delete all of § 52.1551, *Product description*, and substitute therefor the following:

§ 52.1551 Product description.

Canned orange juice is the undiluted, unconcentrated, unfermented juice obtained from sound, mature fruit of the sweet orange group (*Citrus sinensis*) and Mandarin group (*Citrus reticulata*), except tangerines, which fruit was prepared by sorting and by washing prior to extraction of the juice to assure a clean and sanitary product. Such juice may be adjusted by the addition of a non-liquid nutritive sweetening ingredient(s) or other suitable ingredient(s) permissible under the provisions of the Federal Food, Drug, and Cosmetic Act, except that canned concentrated orange juice (commonly known as "hot pack" orange concentrate) may not be added. The product is sufficiently processed by heat to assure preservation in hermetically sealed containers.

Notice of proposed rule making, public procedure thereon, and the postponement of the effective date of this amendment for 30 days, or any lesser period, after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) are impractical, unnecessary, and contrary to the public interest in that:

(1) For purposes of manufacturing, marketing, and inspection this action is immediately necessary in order to make these standards applicable to canned orange juice now being packed in accordance with the Federal Food and Drug regulations;

(2) Compliance with the provisions of this amendment will not require any special preparation that cannot be completed by the effective time; and

¹ Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act or with applicable State laws and regulations.

(3) It is found to be in the best interest of the industry and of consumers of canned orange juice.

(Secs. 202-208, 60 Stat. 1087, as amended; 7 U.S.C. 1621-1627)

Dated: January 15, 1960 to become effective upon publication in the FEDERAL REGISTER.

ROY W. LENNARTSON,
Deputy Administrator,
Marketing Service.

[F.R. Doc. 60-604; Filed, Jan. 20, 1960;
8:54 a.m.]

Chapter VII—Commodity Stabilization Service (Farm Marketing Quotas and Acreage Allotments), Department of Agriculture

PART 723—CIGAR-FILLER TOBACCO, CIGAR BINDER TOBACCO, AND CIGAR-FILLER AND BINDER TOBACCO

National Marketing Quotas

Proclamation of a National Marketing Quota for Cigar-Binder (Types 51 and 52) Tobacco, and a National Marketing Quota for Cigar-Filler and Binder (Types 42, 43, 44, 53, 54 and 55) Tobacco for each of the Three Marketing Years beginning October 1, 1960; and Announcement of the Amounts of and the Apportionments of the National Marketing Quotas for Cigar-Binder (Types 51 and 52) Tobacco and Cigar-Filler and Binder (Types 42, 43, 44, 53, 54 and 55) Tobacco, Respectively, for the 1960-61 Marketing Year among the Several States.

Sec.

723.1101 Basis and purpose.

723.1102 Findings and determinations with respect to the national marketing quota for cigar-binder (types 51 and 52) tobacco for the marketing year beginning October 1, 1960.

723.1103 Findings and determinations with respect to the national marketing quota for cigar-filler and cigar-binder (types 42, 43, 44, 53, 54 and 55) tobacco for the marketing year beginning October 1, 1960.

AUTHORITY: § 723.1101 to 723.1103 issued under sec. 375, 52 Stat. 66, as amended, 7 U.S.C. 1375. Interpret or apply secs. 301, 312, 313, 52 Stat. 38, as amended; 46, as amended; 47, as amended; 7 U.S.C. 1301, 1312, 1313.

§ 723.1101 Basis and purpose.

(a) The regulations contained in §§ 723.1101 to 723.1103 are issued (1) to proclaim a national marketing quota for cigar-binder (types 51 and 52) tobacco, and a national marketing quota for cigar-filler and binder (types 42, 43, 44, 53, 54 and 55) tobacco, for each of the three marketing years beginning October 1, 1960; (2) to establish the reserve supply level and the total supply of (i) cigar-binder (types 51 and 52) tobacco, and (ii) cigar-filler and cigar-binder (types 42, 43, 44, 53, 54 and 55) tobacco, for the marketing year beginning October 1, 1959; (3) to announce the national marketing quotas for (i) cigar-binder (types 51 and 52) tobacco, and (ii) cigar-filler and cigar-binder (types 42,

43, 44, 53, 54 and 55) tobacco, for the marketing year beginning October 1, 1960 and (4) to apportion the national marketing quotas for the 1960-61 marketing year among the several States. The findings and determinations by the Secretary contained in § 723.1102 and § 723.1103 have been made on the basis of the latest available statistics of the Federal Government and after due consideration of data, views, and recommendations received from cigar-binder and cigar-filler and cigar-binder tobacco producers and others as provided in a notice (24 F.R. 8237) given in accordance with the Administrative Procedure Act (5 U.S.C. 1003).

(b) Since the Agricultural Adjustment Act of 1938, as amended, requires the holding of referenda of cigar-binder (types 51 and 52) tobacco producers and of cigar-filler and binder (types 42, 43, 44, 53, 54 and 55) tobacco producers within 30 days after issuance of the proclamation of the national marketing quota for each of such two respective kinds of tobacco to determine whether such producers favor marketing quotas, it is hereby found that compliance with the 30-day effective date provisions of the Administrative Procedure Act is impracticable and contrary to the public interest. Therefore, the findings and determinations and the apportionments of the quotas contained herein shall become effective upon the date of their filing with the Director, Division of the Federal Register.

§ 723.1102 Findings and determinations with respect to the national marketing quota for cigar-binder (types 51 and 52) tobacco for the marketing year beginning October 1, 1960.¹

(a) *Reserve supply level.* The reserve supply level for cigar-binder (types 51 and 52) tobacco is 49.7 million pounds, calculated, as provided in the Agricultural Adjustment Act of 1938, as amended, from a normal year's domestic consumption of 16.0 million pounds and a normal year's exports of 2.0 million pounds.

(b) *Total supply.* The total supply of cigar-binder (types 51 and 52) tobacco for the marketing year beginning October 1, 1959 is 43.1 million pounds consisting of carry-over of 34.6 million pounds and estimated 1959 production of 8.5 million pounds.

(c) *Carry-over.* The estimated carry-over of cigar-binder (types 51 and 52) tobacco at the beginning of the marketing year for such tobacco beginning October 1, 1960, is 31.2 million pounds calculated by subtracting the estimated disappearance for the marketing year beginning October 1, 1959 of 11.9 million pounds from the total supply of such tobacco.

(d) *National marketing quota.* Since the 1959-60 marketing year is the last of three consecutive years for which marketing quotas previously proclaimed will be in effect, a national marketing quota for cigar-binder (types 51 and 52) tobacco, and a national marketing quota for cigar-filler and binder

(types 42, 43, 44, 53, 54 and 55) tobacco, for each of the three years beginning October 1, 1960 are hereby proclaimed, pursuant to section 312(a) (2) of the Act. The amount of cigar-binder (types 51 and 52) tobacco which will make available during the marketing year beginning October 1, 1960, a supply of cigar-binder (types 51 and 52) tobacco equal to the reserve supply level of such tobacco is 18.5 million pounds, and a national marketing quota of such amount is hereby announced. It is determined, however, that a national marketing quota in the amount of 18.5 million pounds would cause undue restriction of marketings during the 1960-61 marketing year and such amount is hereby increased by 20 percent. Therefore, the amount of the national marketing quota for cigar-binder (types 51 and 52) tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1960 is 22.2 million pounds.

(e) *Apportionment of the quota.* The national marketing quota for cigar-binder (types 51 and 52) tobacco is hereby apportioned among the several States pursuant to section 313(a) of the Agricultural Adjustment Act of 1938, as amended, and converted into State acreage allotments in accordance with section 313(g) of the Act as follows:

State:	Acreage allotment
Connecticut	7,811.26
Massachusetts	4,082.38
New York	0.54
Vermont	5.96
Reserve ¹	120.20

¹ Acreage reserved for establishing allotments for new farms.

§ 723.1103 Findings and determinations with respect to the national marketing quota for cigar-filler and binder (types 42, 43, 44, 53, 54, and 55) tobacco for the marketing year beginning October 1, 1960.¹

(a) *Reserve supply level.* The reserve supply level for cigar-filler and binder (types 42, 43, 44, 53, 54 and 55) tobacco is 96.9 million pounds, calculated, as provided in the Agricultural Adjustment Act of 1938, as amended, from a normal year's domestic consumption of 33.0 million pounds and a normal year's exports of 1.0 million pounds.

(b) *Total supply.* The total supply of cigar-filler and binder (types 42, 43, 44, 53, 54 and 55) tobacco for the marketing year beginning October 1, 1959 is 95.9 million pounds consisting of carry-over of 63.3 million pounds and estimated 1959 production of 32.2 million pounds.

(c) *Carry-over.* The estimated carry-over of cigar-filler and binder (types 42, 43, 44, 53, 54 and 55) tobacco at the beginning of the marketing year for such tobacco beginning October 1, 1960 is 62.9 million pounds calculated by subtracting the estimated disappearance for the marketing year beginning October 1, 1959 of 32.6 million pounds from the total supply of such tobacco.

(d) *National marketing quota.* The amount of cigar-filler and binder (types 42, 43, 44, 53, 54, and 55) tobacco which will make available during the market-

ing year beginning October 1, 1960, a supply of cigar-filler and binder tobacco equal to the reserve supply level of such tobacco is 34.0 million pounds, and a national marketing quota of such amount is hereby announced. It is determined, however, that a national marketing quota in the amount of 34.0 million pounds would cause undue restriction of marketings during the 1960-61 marketing year and such amount is hereby increased by 20 percent. Therefore, the amount of the national marketing quota for cigar-filler and binder (types 42, 43, 44, 53, 54 and 55) tobacco in terms of the total quantity of such tobacco which may be marketed during the marketing year beginning October 1, 1960 is 40.8 million pounds.

(e) *Apportionment of the quota.* The national marketing quota for cigar-filler and binder (types 42, 43, 44, 53, 54 and 55) tobacco is hereby apportioned among the several States pursuant to section 313(a) of the Agricultural Adjustment Act of 1938, as amended, and converted into State acreage allotments in accordance with section 313(g) of the Act as follows:

State:	Acreage allotment
Illinois	7.43
Indiana	1.24
Iowa	8.67
Minnesota	244.73
New York	98.51
Ohio	5,412.26
Pennsylvania	265.80
Wisconsin	18,972.99
Reserve ¹	252.79

¹ Acreage reserved for establishing allotments for new farms.

Done at Washington, D.C., this 15th day of January 1960. Witness my hand and the seal of the Department of Agriculture.

TRUE D. MORSE,
Acting Secretary.

[F.R. Doc. 60-606; Filed, Jan. 20, 1960; 8:54 a.m.]

PART 730—RICE

Subpart—1960-61 Marketing Year

PROCLAMATION OF RESULTS OF MARKETING QUOTA REFERENDUM

Section 730.1109 is issued to announce the results of the rice marketing quota referendum for the marketing year August 1, 1960 through July 31, 1961, under the provisions of the Agricultural Adjustment Act of 1938, as amended. The Secretary proclaimed a marketing quota for rice for the 1960-61 marketing year and announced that a referendum would be held on December 15, 1959 (24 F.R. 9749), to determine whether rice producers were in favor of or opposed to marketing quotas for the marketing year August 1, 1960 through July 31, 1961. Since the only purpose of this proclamation is to announce results of the referendum, it is found and determined that with respect to this proclamation application of the notice and procedure provisions of the Administrative Procedure Act is unnecessary.

¹ Rounded to the nearest tenth of a million pounds.

§ 730.1109 Proclamation of the results of the rice marketing quota referendum for the marketing year 1960-61.

In a referendum of farmers engaged in the production of rice for the 1959 crop held on December 15, 1959, 6,168 farmers voted. Of those voting 5,584 or 90.5 percent favored quotas for the marketing year beginning August 1, 1960. Therefore, rice marketing quotas will be in effect for the 1960-61 marketing year.

(Sec. 375, 52 Stat. 66, as amended; 7 U.S.C. 1375)

Issued this 15th day of January 1960.

WALTER C. BERGER,
Administrator,
Commodity Stabilization Service.

[F.R. Doc. 60-624; Filed, Jan. 20, 1960;
8:57 a.m.]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

[Milk Order No. 24]

PART 924—MILK IN SOUTHERN MICHIGAN MARKETING AREA

Order Amending Order

- Sec.
924.0 Findings and determinations.
- DEFINITIONS
- 924.1 Act.
924.2 Secretary.
924.3 U.S.D.A.
924.4 Person.
924.5 Southern Michigan marketing area.
924.6 Handler.
924.7 Producer.
924.8 Producer-handler.
924.9 Producer milk.
924.10 Other source milk.
924.11 Fluid milk product.
924.12 Base milk.
924.13 Excess milk.
924.14 Cooperative Association.
924.15 Route.
924.16 Pool plant.
924.17 Call percentage.

MARKET ADMINISTRATOR

- 924.20 Market Administrator.
924.21 Powers.
924.22 Duties.

REPORTS, RECORDS, AND FACILITIES

- 924.30 Monthly reports of receipts and utilization.
924.31 Other reports.
924.32 Records and facilities.
924.33 Retention of records.

CLASSIFICATION

- 924.40 Skim milk and butterfat to be classified.
924.41 Classes of utilization.
924.42 Shrinkage.
924.43 Transfers.
924.44 Responsibility of handlers and re-classification.
924.45 Computation of skim milk and butterfat in each class.
924.46 Allocation of butterfat classified.
924.47 Allocation of skim milk classified.
924.48 Computation of total producer milk in each class.

MINIMUM PRICES

- 924.50 Basic formula price.
924.51 Class I milk price.
924.52 Class II milk price.
924.53 Handler butterfat differential.

- Sec.
924.54 Location adjustments to handlers.
924.55 Use of equivalent prices.

DETERMINATION OF PRICE TO PRODUCERS

- 924.60 Net obligation to handlers operating pool plants.
924.61 Computation of the 3.5 percent value of all producer milk.
924.62 Uniform price.
924.63 Adjusted uniform price.
924.64 Excess milk price.
924.65 Computation of uniform price for base milk.
924.66 Handler operating a plant which is not a pool plant.
924.67 Location adjustment to producers.
924.68 Producer butterfat differential.
924.69 Notification.

BASE RULES

- 924.70 Determination of base.
924.71 Application of bases.
924.72 Relinquishing a base.

PAYMENT FOR MILK

- 924.80 Time and method of payment.
924.81 Producer-equalization fund.
924.82 Payments to the producer-equalization fund.
924.83 Payment out of the producer-equalization fund.
924.84 Expense of administration.
924.85 Marketing services.
924.86 Adjustment of accounts.
924.87 Overdue accounts.
924.88 Termination of obligations.

APPLICATION OF PROVISIONS

- 924.90 Milk caused to be delivered by co-operative association.
924.91 Handler exemption.
924.92 Handlers subject to other Federal orders.
924.93 Producer-handler exemption.
924.94 Special reporting dates.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

- 924.100 Effective time.
924.101 Suspension or termination.
924.102 Continuing obligations.
924.103 Liquidation.

MISCELLANEOUS PROVISIONS

- 924.110 Agents.
924.111 Separability of provisions.

AUTHORITY: §§ 924.0 to 924.111 issued under sec. 5, 49 Stat. 753 as amended; 7 U.S.C. 608c.

§ 924.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Detroit, Michigan, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order, as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 2 cents per hundredweight or such amount not to exceed 2 cents per hundredweight as the Secretary may prescribe, with respect to (a) all receipts within the month of milk from producers, including milk of such handler's own production, (b) all other source milk on which payments are computed pursuant to § 924.60(d), and (c) the applicable amount specified in § 924.66 (a) (2) or (b) (2).

(b) *Additional findings.* (1) It is necessary in the public interest to make this order amending the order effective not later than February 1, 1960.

(2) The provisions of the said order are known to handlers. The recommended decision of the Acting Deputy Administrator of the Agricultural Marketing Service was issued October 29, 1959, and the decision of the Acting Secretary containing all amendment provisions of this order was issued December 11, 1959. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective February 1, 1960, and that it would be contrary to the public interest to delay the effective date of this amendment for 30 days after its publication in the FEDERAL REGISTER. (See sec. 4(c), Administrative Procedure Act, 5 U.S.C. 1001 et seq.)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in sec. 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement,

tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who participated in a referendum and who during the determined representative period were engaged in the production of milk for sale in the marketing area.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Detroit, Michigan, marketing area, redesignated as the Southern Michigan marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as hereby amended, and the aforesaid order is hereby amended as follows:

DEFINITIONS

§ 924.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended, and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

§ 924.2 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the United States authorized to exercise the powers to perform the duties of the Secretary of Agriculture.

§ 924.3 U.S.D.A.

"U.S.D.A." means the United States Department of Agriculture.

§ 924.4 Person.

"Person" means any individual, partnership, corporation, association, or any other business unit.

§ 924.5 Southern Michigan marketing area.

"Southern Michigan marketing area" hereinafter referred to as the "marketing area" means all territory, including all incorporated municipalities, within the counties of Barry, Bay, Calhoun, Clinton, Eaton, Genesee, Gratiot, Huron, Ingham, Ionia, Isabella, Jackson, Kalamazoo, Kent, Lapeer, Livingston, Macomb, Mecosta, Midland, Montcalm, Oakland, Saginaw, St. Clair, Sanilac, Shiawassee, Tuscola, Washtenaw and Wayne; the townships of Dorr, Leighton, Hopkins, Wayland, Watson, Martin, Otsego and Gunplain in Allegan County; the townships of Lincoln and Standish in Arenac County; the townships of Grant and Surrey in Clare County; the townships of Ash and Berlin in Monroe County; and the townships of Wright, Tallmadge, Georgetown and Jamestown in Ottawa County; all in the State of Michigan.

§ 924.6 Handler.

"Handler" means (a) any person who operates a pool plant, (b) any person who operates a nonpool plant from which fluid milk products are disposed

of on a route in the marketing area, (c) a cooperative association, with respect to milk of its member producers which is delivered to the pool plant of another handler in a tank truck owned, operated by, or under contract to such cooperative association for the account of such cooperative association (such milk shall be considered as having been received by such cooperative association at a location identical to the pool plant to which it is delivered), or (d) a cooperative association with respect to milk customarily received at a pool plant which is diverted to a nonpool plant for the account of such association.

§ 924.7 Producer.

"Producer" means any person other than a producer-handler who produces milk in conformity with the sanitation requirements for fluid milk of any duly constituted health authority, which is:

(a) Received at a pool plant; or

(b) Diverted to a nonpool plant for the account of a cooperative association or of a handler operating a pool plant. Milk so diverted shall be deemed to have been received at the pool plant from which diverted, if for the account of the operator of such plant, or at an identical location if for the account of a cooperative association through diversion from the pool plant of another handler.

§ 924.8 Producer-handler.

"Producer-handler" means a dairy farmer who operates a milk plant from which fluid milk products are distributed en route(s) in the marketing area and receives no fluid milk products except from his own production or by transfer from a pool plant. Such dairy farmer shall furnish the market administrator, upon request, evidence that the production and processing facilities are his own personal enterprise and his risk.

§ 924.9 Producer milk.

"Producer milk" means all the skim milk and butterfat contained in milk received at a pool plant from producers (including that diverted to a nonpool plant for the account of the operator of such pool plant) and milk to be classified at such pool plant pursuant to § 924.43(d).

§ 924.10 Other source milk.

"Other source milk" means all skim milk and butterfat contained in (a) receipts during the month of fluid milk products except (1) receipts from other pool plants and (2) producer milk, and (b) products, other than fluid milk products from any source (including those produced at the pool plant) which are reprocessed or converted to another product in the pool plant during the month.

§ 924.11 Fluid milk product.

"Fluid milk product" means milk, skim milk, flavored milk, buttermilk, yogurt, half and half or cream (exclusive of frozen, whipped and sour cream).

§ 924.12 Base milk.

"Base milk" means the amount of milk delivered by a producer each month which is not in excess of his base computed pursuant to § 924.70 multiplied by

the number of days for which his milk production is delivered during the month.

§ 924.13 Excess milk.

"Excess milk" means milk delivered by a producer each month in excess of his base milk.

§ 924.14 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers, duly organized as such under laws of any state which the Secretary determines:

(a) To be qualified under the standards set forth in the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members; and

(c) To be engaged in making collective sale or marketing milk or its products for its members.

§ 924.15 Route.

"Route" means a delivery (including a delivery by a vendor or sale from a plant or plant store) of any fluid milk product (except bulk cream) classified as Class I to a wholesale or retail outlet other than a delivery to any milk plant.

§ 924.16 Pool plant.

A "pool plant" shall be any plant meeting the conditions of paragraph (a), (b) or (c) of this section, except a plant of a producer-handler or a plant of a handler exempt pursuant to §§ 924.91 or 924.92;

(a) Any plant, hereinafter referred to as a "distributing plant"; (1) in which milk is pasteurized or packaged for distribution in the marketing area, (2) from which fluid milk products are distributed on routes in the marketing area, and (3) from which the total quantity of fluid milk products distributed on all routes operated inside or outside the marketing area during the month equals the applicable percentage specified below of receipts of producer milk, and from supply plants of milk approved by the appropriate health authority for fluid use, exclusive of receipts certified by a cooperative association which operates no milk plant as having been diverted from other pool plants for manufacturing use in a volume which with other like certifications issued by such association does not exceed one-third of the milk delivered to all pool distributing plants by producers who are members of such association:

(i) 55 percent during any of the months of October through March; and

(ii) 45 percent during any of the months of April through September, except that no such requirement shall apply during such months with respect to any such plant which qualified as a distributing plant during each of the immediately preceding months of October through March; or

(b) Any plant, hereinafter referred to as a "supply plant", which is approved by the appropriate health authority in the marketing area for supplying milk for fluid use and from which during the month not less than 25 percent or the call percentage as defined in § 924.17,

whichever is higher, of its dairy farm supply of milk qualified for fluid distribution in the marketing area, including any receipts for which a cooperative association is the handler pursuant to § 924.6(c), less any milk disposed of from the plant as Class I other than by transfers to pool plants of other handlers, is moved to a distributing plant. Any supply plant which has met the required percentages during each of the months of October through January shall be a pool plant for each of the following months of February through September during which it ships the percentage provided for in any call which may be issued pursuant to § 924.17. All supply plants which are operated by one handler, or all of the supply plants from which a handler is responsible for the movement of milk to distributing plants under a marketing agreement certified to the market administrator by both parties, may be considered as a unit for the purpose of meeting the milk movement requirements of this paragraph (b) upon written notice to the market administrator specifying the plants to be considered as a unit and the period during which such consideration shall apply. Such notice, and notice of any change in designation, shall be furnished on or before the 5th day (exclusive of Sundays and holidays) following the month to which the notice applies. In any of the months of February through September a unit shall not contain plants which were not qualified as pool plants, either individually or as a member of a unit, during the previous October through January; or

(c) A plant which is operated by a cooperative association and during the month two-thirds or more of the milk of producers who are members of such association is delivered either directly or pursuant to § 924.6(c) to pool plants of other handlers.

§ 924.17 Call percentage.

(a) The "call percentage" is the percentage of net receipts at a supply plant (after subtracting any milk disposed of as Class I other than by transfers to other pool plants) which such plant is required to ship to a distributing plant(s) in order to qualify as a pool plant pursuant to § 924.16. A call percentage may be announced for any month except April, May, June or July and shall be issued on or before the first day of the month to which it applies. The call percentage shall be computed by the market administrator from his estimate of the Class I utilization of distributing pool plants during the month for which the call percentage is being computed, plus an operating margin of 15 percent. From such estimated gross Class I requirements of distributing plants, inclusive of the 15 percent operating reserve, shall be deducted the estimated receipts directly from producers during such month at such distributing plants and from those supply plants which regularly send their entire available supply to such distributing plants during the months of August through March. The remainder shall be divided by the estimated net available supply

(after subtracting any milk estimated to be disposed of as Class I other than transfers to other pool plants) at supply plants other than those regularly shipping their entire supply as described above, and the result shall be multiplied by 75 to determine the call percentage. No call percentage of less than 25 shall be issued;

(b) The market administrator's announcement of a call percentage shall include the historical data on which his estimates of Class I utilization and the various sources of supply are based, together with appropriate explanatory comments on the computations involved; and

(c) At any time during a month when it appears that more milk is being delivered to distributing plants than is needed to fulfill their Class I requirements, the market administrator may reduce the call percentage applicable for such month.

MARKET ADMINISTRATOR

§ 924.20 Market administrator.

The agency for the administration of this part shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal by, the Secretary.

§ 924.21 Powers.

The market administrator shall have the following powers with respect to this part:

- (a) To administer its terms and provisions;
- (b) To receive, investigate, and report to the Secretary complaints of violations;
- (c) To make rules and regulations to effectuate its terms and provisions; and
- (d) To recommend amendments to the Secretary.

§ 924.22 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including, but not limited to, the following:

(a) Within 30 days following the date on which he enters upon his duties, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon such duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(c) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(d) Pay, out of the funds provided by § 924.84:

- (1) The cost of his bond and of the bonds of his employees;
- (2) His own compensation; and
- (3) All other expenses, except those incurred under § 924.85, necessarily incurred by him in the maintenance and

functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided in this part, and, upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Publicly announce, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office, and by such other means as he deems appropriate, the name of any person who, within 10 days after the day upon which he is required to perform such acts, has not made:

(1) Reports pursuant to §§ 924.30 and 924.31; or

(2) Payments pursuant to §§ 924.80 through 924.85;

(g) Calculate a base for each producer in accordance with § 924.70 and advise the producer and the handler receiving the milk of such base;

(h) Submit his books and records to examination by the Secretary and furnish such information and reports as may be requested by the Secretary;

(i) Audit records of all handlers to verify the reports and payments required pursuant to the provisions of this part;

(j) Prepare and disseminate to producers, handlers and the public, general information which does not reveal confidential information; and

(k) Publicly announce the prices determined for each month as follows:

(1) On or before the 5th day of each month, the minimum class prices for the preceding month computed pursuant to § 924.51 and § 924.52, and the handler butterfat differential computed pursuant to § 924.53; and

(2) On or before the 11th day of each month the uniform price, the adjusted uniform price, the price for base milk and the price for excess milk for the preceding month, computed pursuant to §§ 924.62, 924.63, 924.64 and 924.65, and the producer butterfat differential computed pursuant to § 924.68.

REPORTS, RECORDS, AND FACILITIES

§ 924.30 Monthly reports of receipts and utilization.

On or before the 5th day (exclusive of Sundays) of each month, each handler, other than a producer-handler or a handler exempt pursuant to §§ 924.91 or 924.92, shall report to the market administrator for the preceding month in the detail and on the forms prescribed by the market administrator as follows:

(a) The quantities of skim milk and butterfat contained in:

(1) Milk received from producers (or from qualified dairy farmers, in case of a nonpool plant) including the aggregate quantities of base milk, excess milk and milk to be paid for at the uniform or adjusted uniform price;

(2) Fluid milk products received from other pool plants;

(3) All other source milk; and

(4) Inventories of fluid milk products on hand at the beginning of the month; and

(b) The utilization of all skim milk and butterfat required to be reported

pursuant to paragraph (a) of this section; and

(c) Such other information as the market administrator may prescribe.

§ 924.31 Other reports.

(a) Each producer-handler and each handler described in §§ 924.91 and 924.92 shall make reports at such time and in such manner as the market administrator may request; and

(b) On or before the 20th day of each month each handler who received milk from producers shall report his producer payroll for the preceding month which shall show:

(1) The pounds of base milk and pounds of excess milk, or the pounds of milk to be paid for at the uniform or adjusted uniform price, received from each producer, and the percentage of butterfat contained therein;

(2) The amount and date of payment to each producer (or to a cooperative association); and

(3) The nature and amount of each deduction or charge involved in the payments referred to in subparagraph (2) of this paragraph.

§ 924.32 Records and facilities.

Each handler shall maintain and make available to the market administrator during the usual hours of business, such accounts and records of all of his operations and such facilities as are necessary to verify reports, or to ascertain the correct information with respect to (a) the receipts and utilization or disposition of all skim milk and butterfat received, including all milk products received and disposed of in the same form; (b) the weights and tests for butterfat, skim milk and other contents of all milk and milk products handled; and (c) payments to producers and cooperative associations.

§ 924.33 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which such books and records pertain: *Provided*, That if within such three-year period, the market administrator notifies a handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such books and records until further written notification from the market administrator. The market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 924.40 Skim milk and butterfat to be classified.

All skim milk and butterfat received at a pool plant which is required to be reported pursuant to § 924.30 shall be classified pursuant to §§ 924.41 through 924.43.

§ 924.41 Classes of utilization.

Subject to the conditions set forth in §§ 924.43 and 924.44 the classes of utilization shall be:

(a) Class I utilization shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as provided in paragraph (b) (2) and (3) of this section; and

(2) Not accounted for as Class II utilization;

(b) Class II utilization shall be all the skim milk and butterfat: (1) used to produce any product other than a fluid milk product, (2) disposed of in fluid milk products in bulk form to any commercial food processing establishment for use in food products prepared for consumption off the premises, (3) disposed of as livestock feed or skim milk dumped subject to prior notification to and inspection (at his discretion within 18 hours) by the market administrator, (4) in cream frozen, (5) in inventory of fluid milk products on hand at the end of the month, (6) in shrinkage of producer milk up to two percent of receipts, and (7) in shrinkage of other source milk.

§ 924.42 Shrinkage.

(a) If producer milk is utilized in conjunction with other source milk, the shrinkage shall be allocated pro rata between the receipts of skim milk and butterfat in producer milk and other source milk;

(b) Producer milk transferred from a pool plant to another pool plant without first having been received for the purpose of weighing and testing in the transferor handler's pool plant, and that for which a cooperative association is the handler pursuant to § 924.6(c), shall be included in the receipts at the plant of the transferee handler for the purpose of computing his shrinkage and shall be excluded from receipts of the transferor handler in computing his shrinkage; and

(c) Producer milk received at a supply plant and transferred in bulk from such plant to a distributing plant shall be subtracted from the producer milk receipts at the supply plant and added to the producer milk receipts at the distributing plant in computing shrinkage.

§ 924.43 Transfers.

Skim milk and butterfat transferred or diverted from a pool plant shall be classified:

(a) As Class I if transferred to a pool plant of another handler (except as provided in paragraph (d) of this section) as a fluid milk product unless Class II utilization is indicated by both handlers in their reports pursuant to § 924.30. In no event shall the amount so classified in Class II be greater than the amount of producer milk used in such class by the transferee handler after allocating other source milk and beginning inventory of fluid milk products in his plant pursuant to §§ 924.46 and 924.47;

(b) As Class I if transferred or diverted to a nonpool plant in the form of milk or skim milk in bulk if so reported by the handler, or unless the

market administrator is permitted to audit the records of receipts and utilization at such nonpool plant, in which case the classification of all skim milk and butterfat at such nonpool plant shall be determined and the skim milk and butterfat so transferred from the pool plant shall be allocated to the lowest use during the months of April, May, or June and to the highest use during any other month. If all or a portion of the milk so transferred is retransferred to a second nonpool plant, the same conditions of audit, classification and allocation shall apply;

(c) As Class I if transferred to a nonpool plant in the form of cream in bulk unless the handler claims Class II utilization, and (1) such nonpool plant is located in Pennsylvania, New Jersey, New York or New England, or (2) the market administrator is permitted to audit the record of receipts and utilization at such nonpool plant and such nonpool plant had Class II utilization of not less than an equivalent amount of skim milk and butterfat;

(d) Producer milk transferred in bulk by a cooperative association to a pool plant and that delivered pursuant to § 924.6(c) shall be deducted from the producer milk to be classified as that for which the cooperative association is the handler, and shall be included in producer milk classified at the plant of the transferee handler; and

(e) As Class I if transferred in the form of a fluid milk product to a producer-handler.

§ 924.44 Responsibility of handlers and reclassification.

All skim milk and butterfat shall be classified as Class I utilization unless the handler who first receives such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise.

§ 924.45 Computation of skim milk and butterfat in each class.

For each month the market administrator shall correct for mathematical and other obvious errors the monthly report submitted by each handler, and compute the total pounds of skim milk and butterfat, respectively, in Class I and Class II utilization for such handler. If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water normally associated with such solids in the form of whole milk.

§ 924.46 Allocation of butterfat classified.

The pounds of butterfat remaining after making the following computation shall be the pounds in each class allocated to milk received from producers:

(a) Subtract from the total pounds of butterfat in Class II utilization, the pounds of butterfat in shrinkage pursuant to § 924.41(b) (6);

(b) Subtract from the pounds of butterfat remaining in each class, in series

beginning with the lowest priced utilization, the pounds of butterfat in other source milk other than that to be subtracted pursuant to paragraph (c) of this section;

(c) Subtract from the pounds of butterfat remaining in each class, in series beginning with the lowest priced utilization, the pounds of butterfat in other source milk received from a plant at which the handling of milk is fully subject to the pricing and payment provisions of another marketing agreement or order issued pursuant to the Act;

(d) Subtract from the remaining pounds of butterfat in each class, in series beginning with the lowest priced utilization, the pounds of butterfat contained in inventory of fluid milk products on hand at the beginning of the month;

(e) Subtract from the pounds of butterfat remaining in each class, the pounds of butterfat received from pool plants of other handlers (except from a cooperative association as set forth in § 924.43(d)) in such classes pursuant to § 924.43(a);

(f) Add to the remaining pounds of butterfat in Class II utilization the pounds subtracted pursuant to paragraph (a) of this section; and

(g) If the remaining pounds of butterfat in all classes exceed the pounds of butterfat in milk received from producers, subtract such excess from the remaining pounds of butterfat in each class in series beginning with the lowest priced utilization. Any amount so subtracted shall be known as "overage".

§ 924.47 Allocation of skim milk classified.

Allocate the pounds of skim milk in each class to milk received from producers in a manner similar to that prescribed for butterfat in § 924.46.

§ 924.48 Computation of total producer milk in each class.

The amounts computed pursuant to §§ 924.46 and 924.47 shall be combined into one total for each class and the weighted average butterfat content of producer milk in each class determined.

MINIMUM PRICES

§ 924.50 Basic formula price.

The basic formula price per hundredweight of milk to be used in determining class prices for each month shall be the higher of the prices per hundredweight of milk of 3.5 percent butterfat content computed by the market administrator pursuant to paragraphs (a), (b) or (c) of this section:

(a) The average of the basic (or field) prices ascertained to have been paid per hundredweight for milk of 3.5 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the market administrator by the Department of Agriculture or by the companies indicated below:

Company and Location

Borden Co., Mt. Pleasant, Mich.
Borden Co., New London, Wis.
Borden Co., Orfordville, Wis.
Carnation Co., Oconomowoc, Wis.

Carnation Co., Richland Center, Wis.
Carnation Co., Sparta, Mich.
Pet Milk Co., Belleville, Wis.
Pet Milk Co., Coopersville, Mich.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Wayland, Mich.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(b) The price per hundredweight computed by adding together the plus amounts pursuant to subparagraphs (1) and (2) of this paragraph:

(1) From the average of the daily wholesale selling prices per pound (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter for the month as reported by the Department of Agriculture for the Chicago market, subtract three cents, add 20 percent of the resulting amount and then multiply by 3.5; and

(2) From the simple average of the weighted averages of the carlot prices per pound of spray and roller process nonfat dry milk solids for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month by the Department of Agriculture, deduct 5.5 cents, multiply by 8.2; or

(c) The average of the prices per hundredweight reported to have been paid, or to be paid, for milk of 3.5 percent butterfat content received from farmers during the month at the following plants, except any which meet the qualification of § 924.16, for which prices have been reported to the market administrator:

Present Operator and Location

Borden Co., Mt. Pleasant, Mich.
Carnation Co., Sheridan, Mich.
Carnation Co., Sparta, Mich.
Fairmont Foods Co., Bad Axe, Mich.
Kraft Foods, Clare, Mich.
Kraft Foods, Pinconning, Mich.
Nestle Co., Ubly, Mich.

§ 924.51 Class I milk price.

(a) Subject to the adjustments provided in paragraph (b) or (c) of this section and §§ 924.53 and 924.54, the minimum price per hundredweight to be paid by each handler, f.o.b. his plant, for milk of 3.5 percent butterfat content received from producers or from cooperative associations, during the month, which is classified as Class I utilization, shall be the basic formula price plus \$1.23 during the months of February through July and plus \$1.63 in all other months;

(b) Subject to the conditions in paragraph (c) of this section a supply-demand adjustment shall be computed by the market administrator as follows:

(1) Calculate as a utilization percentage the percentage that total receipts of milk from producers by all handlers was of total Class I utilization at all pool plants in each of the following periods:

(i) The two-year period ending with the second preceding month;

(ii) The two-month period ending with the preceding month and the same period of each of the two preceding years;

(2) Average the utilization percentages of the three two-month periods and

divide by the utilization percentage of the two-year period. Adjust the resulting "seasonal ratio" as follows for each month after the necessary data become available;

(i) Add to the "seasonal ratio" the 11 seasonal ratios similarly computed for the most recent preceding periods;

(ii) Divide 12 by the sum thus obtained; and

(iii) Multiply the "seasonal ratio" by the product thus obtained.

(3) Multiply the adjusted "seasonal ratio" by 136.7;

(4) Subtract from the utilization percentage for the two-month period ending with the preceding month the quantity computed pursuant to subparagraph (3) of this paragraph and round the result to the nearest full percentage, this result is the "deviation percentage"; and

(5) For each percentage point of plus deviation the Class I price will be decreased three cents and for each percentage point of minus deviation the Class I price will be increased three cents, but no such adjustment shall exceed 45 cents; and

(c) For the 26-month period following the effective date of this paragraph and the simultaneous amendment of § 924.5 to redefine and redesignate the marketing area, the following modifications of the procedure set forth in paragraph (b) of this section will apply:

(1) For the first six months, the supply-demand adjustment shall be zero;

(2) For the 7th month through the 10th month, inclusive, the rate specified in paragraph (b) (5) of this section shall be one cent;

(3) For the 11th month through the 14th month, inclusive, the rate specified in paragraph (b) (5) of this section shall be two cents;

(4) For the 7th month through the 14th month, inclusive, the percentages for the corresponding two-month period in the following schedule shall be substituted for the calculations pursuant to paragraph (b) (1), (2), and (3) of this section:

Pricing month	Two-month period	Percentage
January.....	November-December.....	130.2
February.....	December-January.....	132.0
March.....	January-February.....	130.8
April.....	February-March.....	131.7
May.....	March-April.....	135.7
June.....	April-May.....	141.9
July.....	May-June.....	151.7
August.....	June-July.....	150.2
September.....	July-August.....	140.1
October.....	August-September.....	136.4
November.....	September-October.....	132.6
December.....	October-November.....	128.9

(5) For the 15th month through the 26th month, inclusive, the utilization percentages calculated pursuant to paragraph (b) (1) of this section shall be for the one-year period ending with the second preceding month, for the two-month period ending with the preceding month, and for the same period of the preceding year. The average of these two-month period percentages will be divided by the percentage for the one-year period, multiplied by 136.7 and this result averaged with the percentage specified in subparagraph (4) of this

paragraph. This result will be subtracted from the utilization percentage for the two-month period ending with the preceding month in computing the deviation percentage.

§ 924.52 Class II milk price.

The minimum price per hundredweight to be paid by each handler, f.o.b. his plant, for milk of 3.5 percent butterfat content received from producers or from a cooperative association during the month which is classified as Class II utilization shall be as follows:

(a) In the months of February through September the higher of:

(1) The price described in § 924.50 (c); or

(2) The price per hundredweight described in § 924.50(b), less 18.3 cents; and

(b) In the months of October, November, December and January, add 20 cents per hundredweight to the price determined pursuant to paragraph (a) of this section.

§ 924.53 Handler butterfat differential.

There shall be added to or subtracted from, the prices of milk for each class as computed pursuant to §§ 924.51 and 924.52, for each one-tenth of one percent that the average butterfat test of the milk in each class above or below 3.5 percent, as the case may be, an amount equal to the average daily wholesale price per pound of Grade A (92-score) bulk creamery butter per pound at Chicago as reported by the U.S.D.A. during the month multiplied by 0.113 and the result rounded to the nearest one-tenth of a cent.

§ 924.54 Location adjustments to handlers.

(a) *Zone rates.* For plants located in the following described territory in Michigan the applicable zone rates shall be as follows:

Zone I—No Adjustment

Genesee County; Oakland County; Macomb County; St. Clair County; Wayne County; Monroe County; in Washtenaw County the townships of Webster, Northfield, Salem, Scio, Ann Arbor, Superior, Lodi, Pittsfield, Ypsilanti, Saline, York and Augusta; Saginaw County, except the townships of Jonesfield, Richland, Lakefield, Fremont, Marion, Brant, Chapin, Brady, Chesaning, and Maple Grove; and Bay County, except the townships of Gibson, Mt. Forest, Pinconning, Garfield and Fraser.

Zone II—Adjustment Rate 7 Cents

Livingston County; Jackson County; Lenawee County; Ingham County; Lapeer County, except the townships of Rich, Burlington, Marathon, Deerfield, North Branch and Burnside; Hillsdale County, except the townships of Litchfield, Allen, Reading and Camden; and in Washtenaw County all the territory not included in Zone I.

Zone III—Adjustment Rate 10 Cents

Midland County; Shiawassee County; Tuscola County; Clinton County, except the townships of Lebanon, Dallas, Westphalia and Eagle; in Arenac County the townships of Lincoln and Standish; in Bay and Saginaw Counties all townships excluded from Zone I; in Lapeer County all townships excluded from Zone II; in Sanilac County the townships of Flynn, Elk, Buel, Lexington, Maple Valley, Speaker, Fremont and Worth; and in Huron County the townships of McKinley,

Winsor, Sebawaing, Brookfield, Caseville and Fairhaven.

Zone IV—Adjustment Rate 12 Cents

Branch County; Calhoun County; Eaton County; Gratiot County; Isabella County; in Hillsdale County all territory excluded from Zone II; in Clinton County all territory excluded from Zone III; in Ionia County the townships of Ronald, North Plains, Ionia, Lyons, Orange, Portland, Sebawa and Danby; in Montcalm County the townships of Home, Richland, Day, Ferris, Evergreen, Crystal, Bushnell and Bloomer; and in Clare County the townships of Freeman, Lincoln, Hatton, Arthur, Garfield, Surrey, Grant and Sheridan.

Zone V—Adjustment Rate 15 Cents

St. Joseph County; Kalamazoo County; Barry County; Kent County; Mecosta County; in Ionia and Montcalm Counties all territory not included in Zone IV; in Allegan County the townships of Salem, Dorr, Leighton, Monterey, Hopkins, Wayland, Allegan, Watson, Martin, Trowbridge, Otsego and Gun Plain; in Ottawa County the townships of Wright, Tallmadge, Georgetown and Jamestown; in Sanilac and Huron Counties, all territory not included in Zone III; and in Osceola County the townships of Lincoln, Cedar, Osceola, Sylvan, Richmond, Hersey, Ewart and Orient.

Zone VI—Adjustment Rate 20 Cents

Berrien County; Cass County; Van Buren County; Muskegon County; Newaygo County; and in Allegan and Ottawa Counties, all territory not included in Zone V.

(b) *Mileage rates.* The mileage rate applicable to plants located outside of Zones I—VI, inclusive, as described in § 924.54(a), shall be based on the shortest highway distance to the plant from the City Hall in Detroit, Michigan, as determined by the market administrator, and shall be 15 cents for distances of more than 50 miles, but not more than 70 miles, plus one-cent for each 20 miles or fraction thereof over 70 miles.

(c) *Direct disposition adjustment.* With respect to milk received from producers at a pool plant and classified as Class I utilization without movement to another pool plant the Class I price to the handler receiving such milk shall be reduced by the applicable zone rate for plants located in the zones described in § 924.54(a) and by the applicable mileage rate for plants located elsewhere.

(d) *Transfer adjustments.* With respect to fluid milk products moved in bulk from a pool plant to a pool plant described in § 924.16(a) the operator of the transferee plant shall receive credit at the applicable zone or mileage rate, based on the location(s) of the transferor plant(s), the total volume on which such credit is computed to be not more than the amount by which 108 percent of Class I utilization at the transferor plant exceeds receipts of milk at such plant from producers and from cooperative associations pursuant to § 924.6(c), and to be assigned to transferor plants pro rata to receipts of fluid milk products from such plants.

§ 924.55 Use of equivalent prices.

If for any reason a price quotation required by this order for computing class prices or for any other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

DETERMINATION OF PRICE TO PRODUCERS

§ 924.60 Net obligation to handlers operating pool plants.

The net obligation for milk received by each handler who operates a pool plant shall be computed as follows:

(a) Multiply the pounds of milk in each class computed pursuant to § 924.48 by the applicable class prices;

(b) Add an amount determined by multiplying the pounds of overage computed pursuant to § 924.46(g) and the corresponding step of § 924.47 by the applicable class prices;

(c) Add any amount obtained through multiplying by the difference between the Class II price for the preceding months and the Class I price for the current month the lesser of:

(1) The hundredweight of milk subtracted from Class I pursuant to § 924.46(d) and the corresponding step of § 924.47; or

(2) The hundredweight of producer milk classified as Class II (except as shrinkage) for the preceding month; and

(d) Add an amount equal to the difference between the values (subject to butterfat and location differentials) at the Class I price and the Class II price with respect to:

(1) Other source milk subtracted from Class I pursuant to § 924.46(b) and the corresponding step of § 924.47; and

(2) Milk in inventory subtracted from Class I pursuant to § 924.46(d) and the corresponding step of § 924.47 which is in excess of the sum of:

(i) The quantity of milk for which a payment was computed pursuant to paragraph (c) of this section; and

(ii) The quantity of milk subtracted from Class II in the preceding month pursuant to § 924.46(c) and the corresponding step of § 924.47.

§ 924.61 Computation of the 3.5 percent value of all producer milk.

For each month, the market administrator shall compute the 3.5 percent value of all producer milk by:

(a) Combining into one total the individual values of milk of all handlers computed pursuant to § 924.60;

(b) Adding, if the weighted average butterfat test of all producer milk represented in paragraph (a) of this section is less than 3.5 percent, or subtracting if the weighted average butterfat test of such milk is more than 3.5 percent, an amount computed by multiplying the total pounds of butterfat represented by the difference of such average butterfat test from 3.5 percent by the butterfat differential provided in § 924.68 multiplied by 10;

(c) Adding the aggregate of the values of the applicable producer location adjustments pursuant to § 924.67; and

(d) Adding not less than one-half of the unobligated balance in the producer-equalization fund.

§ 924.62 Uniform price.

For each month, the uniform price shall be computed by:

(a) Dividing the amount computed pursuant to § 924.61 by the hundred-

weight of milk received from producers represented by the values included in § 924.61; and

(b) Subtracting not less than six cents or more than seven cents.

§ 924.63 Adjusted uniform price.

For the purpose of payments pursuant to § 924.70(c) the uniform price computed pursuant to § 924.62 shall be adjusted by deducting therefrom the applicable percentage specified below of the differences between the uniform price and the excess milk price, rounded to the nearest cent:

Month	Percent
January, February and March	30
April, May and June	50
July	15
All others	5

§ 924.64 Excess milk price.

For each month, the excess price shall be the price of Class II utilization, determined pursuant to § 924.52, rounded to the nearest cent.

§ 924.65 Computation of uniform price for base milk.

(a) Multiply the total pounds of excess milk for the month by the excess milk price;

(b) Multiply the total amount of milk to be paid for at the uniform price pursuant to § 924.70 (d) and (f) by the uniform price for the month;

(c) Multiply the total amount of milk to be paid for at the adjusted uniform price pursuant to § 924.70(c) by the adjusted uniform price for the month;

(d) Subtract the total values arrived at in paragraphs (a), (b) and (c) of this section from the total 3.5 percent value of all producer milk arrived at in § 924.61;

(e) Divide the resultant value by the total hundredweight of base milk and milk to be paid for at the base price pursuant to § 924.70 (b) and (e); and

(f) Subtract not less than six cents nor more than seven cents. The resultant hundredweight price shall be the uniform price of base milk of 3.5 percent butterfat content received at pool plants.

§ 924.66 Handler operating a plant which is not a pool plant.

Each handler, other than a producer-handler or one exempt pursuant to §§ 924.91 and 924.92, who during the month operates a nonpool plant from which fluid milk products are disposed of on a route in the marketing area, shall in lieu of the payment required pursuant to § 924.80 through § 924.83, pay to the market administrator as follows:

(a) If such handler so elects at the time of reporting pursuant to § 924.30 his obligation shall be as follows:

(1) On or before the 13th day after the end of the month, for the producer-equalization fund, an amount equal to the difference between the value of Class I milk disposed of during the month on routes in the marketing area at the applicable Class I price for the month and the value of such milk at the Class II price; and

(2) On or before the 13th day after the end of the month, as his pro rata

share of the expense of administration, the rate specified in § 924.84 with respect to the fluid milk products disposed of on routes in the marketing area;

(b) Unless such handler elects to have his obligations computed pursuant to paragraph (a) of this section, his obligation shall be as follows:

(1) On or before the 25th day after the end of the month, for the producer-equalization fund, the lesser of the amount computed pursuant to paragraph (a) (1) of this section, or any plus amount resulting from the following computation:

(i) Compute an amount equal to the value of milk which would be computed pursuant to § 924.60 for milk received from dairy farmers at such plant for such month if such plant had been a pool plant;

(ii) Deduct the gross payments made by the handler to qualified dairy farmers for milk received at such plant for such month. Gross payments to be included in this computation shall be limited to cash payments made to the dairy farmer or his assignee on or before the date of the report required pursuant to § 924.31, plus the value of any supplies or services furnished by the handler on prior written authorization or as evidenced by a delivery ticket signed by the dairy farmer; and

(2) On or before the 25th day after the end of the month, as his pro rata share of the expense of administration, an amount equal to that which would have been computed pursuant to § 924.84 had such plant been a pool plant.

§ 924.67 Location adjustment to producers.

In making payments to producers or cooperative associations pursuant to § 924.80 a handler may deduct with respect to base milk and milk to be paid for at the uniform price or adjusted uniform price the zone rate per hundredweight applicable pursuant to § 924.54(a) for the location of the plant at which the milk was received, or if such plant is not located in a defined zone, the mileage rate applicable pursuant to § 924.54(b).

§ 924.68 Producer butterfat differential.

In making payments pursuant to § 924.80, the base price and excess price or the uniform prices shall be increased or decreased for each one-tenth of one percent of butterfat content that the milk received from each producer or a cooperative association is above or below 3.5 percent, as the case may be, by an amount equal to the average daily wholesale price per pound of Grade A (92-score) bulk creamery butter per pound at Chicago as reported by the U.S.D.A. during the month multiplied by 0.113 and the result rounded to the nearest one-half cent.

§ 924.69 Notification.

On or before the 12th day after the end of each month the market administrator shall notify each handler of:

(a) The amounts and values of his milk in each class and the total of such amounts and values;

(b) The base of any producer delivering milk to the handler which was not

used in making payments for the previous month;

(c) The amount due such handler from the producer-equalization fund or the amount to be paid by such handler to the producer-equalization fund, as the case may be; and

(d) The totals of the minimum amounts to be paid by such handler pursuant to §§ 924.80, 924.82, 924.84, 924.85 and 924.86.

BASE RULES

§ 924.70 Determination of base.

(a) A producer who delivered milk on at least 122 days during the period August 1 through December 31, inclusive, of any year shall have a base computed by the market administrator to be applicable, subject to § 924.72, for the 12 months period beginning the following February 1, equal to his daily average milk deliveries from the date on which milk was first delivered in the period to the end of such August 1-December 31 period: *Provided*, That a producer who had a base on December 1 and whose average of daily deliveries for the August 1-December 31 period is less than such base shall have a base computed by subtracting from his previous base any amount by which 90 percent of his previous base exceeds such average of daily deliveries;

(b) A producer with an established base who does not forfeit his base pursuant to § 924.71(c) but who fails to deliver milk on at least 122 days of the August 1 through December 31 period shall have his base for the 12 months beginning the following February 1 computed by dividing the total pounds shipped during the period by 122;

(c) Except as provided in paragraphs (d), (e), (f) and (g) of this section a producer who has no base shall be paid until February 1 following the August-December period within which he establishes a base pursuant to paragraph (a) of this section at the adjusted uniform price computed pursuant to § 924.63;

(d) Whenever total receipts of producer milk by all handlers during the month are less than 112.5 percent of the total Class I utilization of all milk by handlers during such month, all producers and cooperative associations shall be paid the uniform price for all milk delivered;

(e) When a plant first becomes a pool plant pursuant to § 924.16(a) bases for producers delivering to such plant may be established on the basis of deliveries of milk to such plant for the preceding August-December period certified by submission of delivery receipts or other evidence satisfactory to the market administrator; and

(f) Notwithstanding the provisions of paragraph (e) of this section producers without an established base who are delivering milk to plants during the month that such plants first become pool plants as a result of redefinition of the marketing area effective at the same date as this paragraph shall be paid until February 1, 1961, at the uniform price computed pursuant to § 924.62; and

(g) Through January 1961 a producer who has no base (or who relinquishes his base pursuant to § 924.72) shall be paid

during the first three full months he is a producer the uniform price in each of the months of August through December and in other months, the price applicable to base milk for the following percentages of his milk deliveries and the price applicable to excess milk for the remainder of his deliveries: 75 percent for January and February; 70 percent for March; 60 percent for April and July; and 40 percent for May and June. At the conclusion of the first three full months delivery, a base shall be established for payments to such producer through January 1961, in the following manner: Multiply the total deliveries in the months of August and September by 0.8 and October, November and December by 0.9, in January and February by 0.75, in March by 0.7, in April and July by 0.6, and in May and June by 0.4. Add the amounts so computed and divide by the number of days in which milk was delivered during the three months. No base applicable to the 12 months beginning February 1, 1961, shall be established on deliveries of less than 122 days. A producer with an established base who relinquishes such base after September 1960 shall have a base established equal to his daily average deliveries in the September 1-December 31, 1960, period.

§ 924.71 Application of bases.

(a) A base shall apply to deliveries of milk by the producer for whose account milk was delivered during the base period, and upon death may be transferred to a member or members of the deceased producer's immediate family;

(b) Bases may be transferred under the following conditions upon written notice by the holder of the base to the market administrator on or before the last day of the month that such base is to be transferred;

(1) Upon retirement or entry into military service of a producer the entire base may be transferred to a member or members of his immediate family;

(2) Bases may be held jointly and if such joint holding is terminated the base may be divided among the joint holders as specified in writing to the market administrator; and

(3) Two or more producers with bases may combine those bases upon the formation of a bona fide partnership; and

(c) A producer who does not deliver milk to any handler for 45 consecutive days shall forfeit his base except that the following producers may retain their bases without loss for 12 months:

(1) A producer who suffers the complete loss of his barn as a result of fire or windstorm; or

(2) A producer for whom loss of 50 percent or more of the milk herd from brucellosis or bovine tuberculosis, is shown by evidence issued under state or Federal authority.

§ 924.72 Relinquishing a base.

A producer with a base, by notifying the market administrator that he relinquishes such base, may be paid pursuant to the provisions of § 924.70(c) applicable to a producer without a base beginning with the first day of the month in which such notification is received by the market administrator.

PAYMENT FOR MILK

§ 924.80 Time and method of payment.

(a) Except as provided by paragraph (b) of this section, on or before the 15th day of each month, each handler (except a cooperative association) shall pay each producer for milk received from him during the preceding month, not less than an amount of money computed by multiplying the total pounds of such milk by the applicable uniform price(s) computed pursuant to §§ 924.62, 924.63, 924.64 or 924.65 adjusted by the location and butterfat differentials pursuant to §§ 924.67 and 924.68, less any proper deduction authorized by the producer: *Provided*, That if by such date such handler has not received full payment for such month pursuant to § 924.83 he may reduce such payments uniformly per hundredweight for all producers, by an amount not in excess of the per hundredweight reduction in payment from the market administrator; however, the handler shall make such balance of payment to those producers to whom it is due on or before the date for making payments pursuant to this paragraph next following that on which such balance of payment is received from the market administrator;

(b) (1) Upon receipt of a written request from a cooperative association which the Secretary determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the association, each handler shall pay to the cooperative association on or before the 13th day of each month, in lieu of payments pursuant to paragraph (a) of this section an amount equal to the gross sum due for all milk received from certified members, less amounts owing by each member-producer to the handler for supplies purchased from him on prior written order or as evidenced by a delivery ticket signed by the producer and each handler shall submit to the cooperative association written information on or before the 6th working day of each month which shows for each such member-producer (i) the total pounds of milk received from him during the preceding month, (ii) the total pounds of butterfat contained in such milk, (iii) the number of days on which milk was received, and (iv) the amounts withheld by the handler in payment for supplies sold. The foregoing payment and submission of information shall be made with respect to milk of each producer whom the cooperative association certifies is a member, which is received on and after the first day of the month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the association;

(2) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the association and shall be subject to verification

at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler shall be made by written notice to the market administrator, and shall be subject to his determination;

(c) On or before the 13th day after the end of each month, each handler shall pay a cooperative association which is a handler, with respect to milk received by him from a pool plant operated by such cooperative association, or in bulk tank delivery pursuant to § 924.6(c), not less than an amount computed by multiplying the price, for base milk subject to the location adjustment applicable at the transferee plant as provided by § 924.54 and the butterfat differential provided by § 924.53, by the total hundredweight of milk received by such handler from the cooperative association.

§ 924.81 Producer-equalization fund.

The market administrator shall establish and maintain a separate fund, known as the "producer-equalization fund" into which he shall deposit all payments received pursuant to § 924.82 and out of which he shall make all payments pursuant to § 924.83.

§ 924.82 Payments to the producer-equalization fund.

(a) On or before the 13th day after the end of each month, each handler whose value of milk is required to be computed pursuant to § 924.60 shall pay to the market administrator any amount by which such value for such month (in the case of a cooperative association which is a handler, plus the minimum amount due from other handlers pursuant to § 924.80(c)) is greater than the minimum amount required to be paid by him pursuant to § 924.80; and

(b) On or before the date applicable thereto each handler who is required to make payment pursuant to § 924.66 (a) (1) or (b) (1) shall pay such amount to the market administrator.

§ 924.83 Payment out of the producer-equalization fund.

On or before the 14th day after the end of each month, the market administrator shall pay to each handler any amount by which the value of milk for such handler for the month pursuant to § 924.60 (in the case of a cooperative association which is a handler, plus the minimum amount due from other handlers pursuant to § 924.80(c)) is less than the total minimum amount required to be paid by him pursuant to § 924.80, less any unpaid obligations of such handler to the market administrator: *Provided*, That if the balance in the producer-equalization fund is insufficient to make all payments to all handlers pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds become available.

§ 924.84 Expense of administration.

As his pro rata share of the expense of administration of this part, each handler shall pay to the market admin-

istrator on or before the 13th day after the end of each month two cents per hundredweight, or such amount not exceeding two cents per hundredweight as the Secretary may prescribe, with respect to (a) all receipts within the month of milk from producers, including milk of such handler's own production, (b) all other source milk on which payments are computed pursuant to § 924.60 (d), and (c) the applicable amount specified in § 924.66 (a) (2) or (b) (2).

§ 924.85 Marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments pursuant to § 924.80 (a) for milk received from each producer (including milk of such handler's own production) at a plant not operated by a cooperative association of which such producer is a member, shall deduct five cents per hundredweight, or such amount not exceeding five cents per hundredweight as the Secretary may prescribe, and, on or before the 13th day after the end of each month, shall pay such deductions to the market administrator. Such moneys shall be used by the market administrator to verify weights, samples, and tests of milk received from producers and to provide producers with market information, such services to be performed by the market administrator or by an agent engaged by and responsible to him;

(b) In the case of producers whose milk is received at a plant not operated by a cooperative association of which such producers are members, for which payment is not made pursuant to § 924.80 (b) or (c), and for whom a cooperative association is actually performing the services described in paragraph (a) of this section, as determined by the Secretary, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from payments required pursuant to § 924.80 as may be authorized by such producers, and pay such deductions on or before the 13th day after the end of the month to the cooperative association rendering such services of which such producers are members.

§ 924.86 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses adjustments to be made, for any reason, which result in moneys due:

(a) To the market administrator from such handler;

(b) To such handler from the market administrator; or

(c) To any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any such amount due, and payment thereof shall be made on or before the next date for making payment set forth in the provisions under which such error occurred, following the 5th day after such notice.

§ 924.87 Overdue accounts.

Any unpaid obligation of a handler or of the market administrator pursuant to

§§ 924.82, 924.83, 924.84, 924.85 and 924.86 shall be increased one-half of one percent on the first day of the month next following the due date of such obligation and on the first day of each month thereafter until such obligation is paid.

§ 924.88 Termination of obligations.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the month during which the market administrator receives the handler's report of utilization of the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to a cooperative association, the name of such producers or association, or if the obligation is payable to the market administrator, the account for which it is to be paid;

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books or records required by this order to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the month following the month during which such books and records pertaining to such obligation are made available to the market administrator or his representatives;

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed; and

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the month during which the milk involved in the claim was received if an under payment is claimed, or two years after the end of the month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15) (A) of the Act, a petition claiming such money.

APPLICATION OF PROVISIONS

§ 924.90 Milk caused to be delivered by cooperative associations.

Milk referred to in this part as received from producers by a handler shall include milk of producers caused to be delivered to such handler by a cooperative association.

§ 924.91 Handler exemption.

A handler who operates a plant, other than a plant described in § 924.16 (b) or (c), located outside the marketing area from which fluid milk products are disposed of on a route(s) within the marketing area but from which the disposition of fluid milk products on all routes operating wholly or partly within the marketing area averages less than 600 pounds per day for the month, and from which no milk is transferred to other handlers, shall be exempted for such month from all provisions of this part except §§ 924.31, 924.32, and 924.33.

§ 924.92 Handlers subject to other Federal orders.

A handler who operates a plant at which during the month milk is fully subject to the classification, pricing and payment provisions of another marketing agreement or order issued pursuant to the act and the disposition of fluid milk products in the other Federal marketing area exceeds that in the Southern Michigan marketing area shall be exempt for such month from all provisions of this part except §§ 924.31, 924.32, and 924.33.

§ 924.93 Producer-handler exemption.

A producer-handler shall be exempt from all provisions of this part except §§ 924.31, 924.32, and 924.33.

§ 924.94 Special reporting dates.

When a holiday prevents normal business activities on any day except Sunday during the first 15 days of the month, those of the dates specified in §§ 924.22 (j) (2), 924.30, 924.31 (b), 924.66, 924.80, 924.82, 924.83, 924.84, and 924.85 which follow such holiday shall be postponed by the number of days lost as a result of such holiday.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 924.100 Effective time.

The provisions of this part, or of any amendment hereto, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

§ 924.101 Suspension or termination.

The Secretary shall, whenever he finds that this part, or any provision thereof, obstructs or does not tend to effectuate the declared policy of the Act, terminate or suspend the operation of this part of any such provision thereof.

§ 924.102 Continuing obligations.

If, upon the suspension or termination of any or all provisions of this part, there are any obligations thereunder the final accrual or ascertainment of which requires further acts by any person (in-

cluding the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

§ 924.103 Liquidation.

Under the suspension or termination of the provisions of this part, except this section, the market administrator, or such other liquidating agent as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated, all assets, books, and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers, in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 924.110 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

§ 924.111 Separability of provisions.

If any provision of this part, or its application to any person or circumstances, is held invalid the application of such provisions, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

(Secs. 1-19, 48 Stat. 31, as amended, 7 U.S.C. 601-674)

Issued at Washington, D.C., this 18th day of January 1960, to be effective on and after the 1st day of February 1960.

CLARENCE L. MILLER,
Assistant Secretary.

[F.R. Doc. 60-622; Filed, Jan. 20, 1960;
8:57 a.m.]

[Milk Order No. 61]

PART 961—MILK IN THE PHILADELPHIA, PA., MARKETING AREA

Order Amending Order

§ 961.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Philadelphia, Pennsylvania, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than February 1, 1960.

The provisions of the said order are known to handlers. The recommended decision of the Deputy Administrator of the Agricultural Marketing Service was issued November 13, 1959 and the decision of the Assistant Secretary containing all amendment provisions of this order, was issued December 14, 1959. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective February 1, 1960, and that it would be contrary to the public interest to delay the effective date of this amendment for 30 days after its publication in the FEDERAL REGISTER. (See sec. 4(c), Administrative Procedure Act, 5 U.S.C. 1001 et seq.).

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in sec. 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order is approved or favored by at least three-fourths of the producers who participated in a referendum and who during the determined representative period were engaged in the production of milk for sale in the marketing area.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof the handling of milk in the Philadelphia, Pennsylvania, marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as hereby amended, and the aforesaid order is hereby amended, as follows:

1. Delete § 961.52 and substitute therefor the following:

§ 961.52 Location differentials to handlers.

(a) Subject to the conditions of paragraph (b) of this section, for that milk received from producers at a producer milk plant located 45 miles or more from the City Hall in Philadelphia, Pennsylvania, by shortest highway distances as determined by the market administrator, and classified as Class I or Class II milk, respectively, Class I and Class II prices shall be reduced at the rate set forth in the following schedule according to the location of the producer milk plant where such milk was received from producers:

Distance of plant from City Hall	Rate per hundredweight (cents)
45 miles.....	23.0
Each additional 10 miles or fraction thereof an additional.....	1.5

Distance of plant from City Hall	Rate per hundredweight (cents)
45 to 70 miles.....	5.0
Each additional 10 miles or fraction thereof an additional.....	1.0

(b) In the case of producer milk plants operated by the same handler as part of a system the amount of Class I and Class II milk to which the adjustments set forth in paragraph (a) of this section shall apply shall be determined as follows:

(1) Increase the Class I utilization at the producer milk plant(s) specified in § 961.7(a), operated by such handler and at which no location adjustment applies, by 5 percent or by an amount which is not in excess of the Class II utilization at such plant(s), whichever is less, and deduct the amount of any such increase from the Class II utilization at such plant(s);

(2) Add to the adjusted Class I and Class II utilization computed pursuant to subparagraph (1) of this paragraph the Class I and Class II utilization, respectively, at other producer milk plants in the system;

(3) Except as provided in subparagraph (5) of this paragraph assign the Class I utilization computed pursuant to paragraph (2) of this paragraph first to producer receipts at producer milk plants operated by such handler and at which no location adjustments apply and any

remaining Class I utilization shall be assigned to receipts of producer milk at the remaining plant(s) in the system to the extent that milk is moved from such plant(s) in the form of any Class I products, in sequence, beginning with the plant at which the lowest location adjustment rate applies;

(4) Producer receipts which are not assigned to Class I utilization pursuant to subparagraph (3) of this paragraph shall be assigned to Class II milk; and

(5) If a system of plants receives both Grade A and standard milk, the receipts of Grade A milk shall first be assigned in the sequence set forth in subparagraph (3) of this paragraph to the extent of actual disposition as Grade A milk in Class I and any remaining receipts of Grade A milk shall be assigned in conjunction with standard milk under subparagraphs (3) and (4) of this paragraph.

2. Delete § 961.61 and substitute therefor the following:

§ 961.61 Plants subject to other Federal orders.

(a) Any plant qualified as a producer milk plant pursuant to § 961.7(a) and as a regulated (pool) plant under the provisions of any other Federal order shall be fully subject to the provisions of this order during any month in which it disposes of in this marketing area on routes a greater volume of its Class I milk (as defined in this part) than the volume of Class I milk (as defined in such other Federal milk order) disposed of in such other marketing area on routes unless, notwithstanding that it would be regulated under this part, it is nevertheless regulated under such other order.

(b) Any plant qualified as a producer milk plant pursuant to § 961.7(b) and as a regulated (pool) plant under the provisions of any other Federal order shall be fully subject to the provisions of this order during any month in which it disposes of a greater volume of its Class I milk (as defined in this part) to producer milk plants under this order than the volume of Class I milk (as defined in such other Federal order) disposed of to plants at which milk is priced and pooled under such other order unless it would be a regulated (pool) plant by virtue of route distribution under such other order or, notwithstanding that it would be regulated under this part, it is nevertheless regulated under such other order.

(c) Any producer milk plant qualified pursuant to § 961.7 (a) or (b) which is a fully regulated (pool) plant under another Federal order shall not be subject to the provisions of §§ 961.50 through 961.53, 961.70 through 961.71, and 961.80 through 961.85 except as such provisions apply to payments to a cooperative association in its capacity as, the operator of any plant which is a producer milk plant under this part and a nonpool plant under the other Federal order: *Provided*, That for purposes of determining the status under this part of such plant's otherwise unregulated supply sources, the assignment under such other order of, (1) producer receipts, (2) receipts from other pool plants, and (3) other source receipts on which any compensatory payment was applicable shall be

recognized by equivalent assignment under this order prior to the application of § 961.47 with respect to other receipts at such plant.

(d) In the case of the New York-New Jersey order, equivalent assignment under this part as provided in paragraph (c) of this section shall be as follows:

New York-New Jersey Order	Philadelphia Order
Class I-A or I-B-----	Class I.
Class II-----	Class II.
Class III-----	Class II.
Skim milk subject to the fluid skim differential.	Class I.

(Secs. 1-19, 43 Stat. 31, as amended; 7 U.S.C. 601-674)

Issued at Washington, D.C., this 18th day of January 1960, to be effective on and after the 1st day of February 1960.

CLARENCE L. MILLER,
Assistant Secretary.

[F.R. Doc. 60-621; Filed, Jan. 20, 1960; 8:57 a.m.]

Title 5—ADMINISTRATIVE PERSONNEL

Chapter VI—Department of Defense SUBCHAPTER A—OFFICE OF THE SECRETARY OF DEFENSE

PART 601—SALARIES AND PERSONNEL PRACTICES APPLICABLE TO TEACHERS, CERTAIN SCHOOL OFFICERS, AND OTHER EMPLOYEES OF THE OVERSEAS DEPENDENTS' SCHOOLS OF THE DEPARTMENT OF DEFENSE

Subpart B—Regulations Governing Salaries and Personnel Practices Applicable to Teachers, Certain School Officers and Other Employees of the Overseas Dependents' Schools of the Department of Defense

MISCELLANEOUS AMENDMENTS

The following miscellaneous amendments to Part 601 were approved December 30, 1959:

Section 601.10(b) (3) has been revised, and new § 601.10(b) (4) has been added; § 601.10(c) (1) and (6) have been revised, and a new § 601.10(c) (8) has been added. These amendments were effective January 1, 1960, and read as follows:

(b) *Schedules.* * * *

(3) Prescribe a flat daily rate for substitute teachers and summer school teachers.

(4) Provide for appropriate additional compensation for certain extracurricular activities normally associated with elementary and secondary school programs.

(c) *Rules for fixing compensation—*

(1) *New appointments.* Each new appointment of teachers who meet minimum qualifications requirements will be made at the first numerical step rate for the level to which the employee is assigned, plus any additional increment to which he would be entitled in accordance with paragraphs (b) (2) of this section.

Those appointed who do not meet minimum qualifications standards will be appointed to special step rates which will be prescribed in the compensation schedules.

(6) *Initial conversion from Classification Act Schedule to the Teacher Schedule.* (i) Upon initial conversion, a teacher will be converted to a level in the new compensation schedule which is prescribed as equivalent to the Classification Act grade from which converted. The step to which the teacher is converted in the new level shall be the numerical step equivalent to the step held under the Classification Act.

(ii) If after conversion the position as a result of the classification standards prescribed pursuant to § 601.9(a), is reclassified to a lower level the usual rules determining salary rates will apply, except that if the salary exceeds the highest rate in the range for the level in which the position is placed, such rate shall be retained as long as the incumbent remains in a position in the same level.

(8) *Daily rate.* The daily rate for a teacher will be his school year salary divided by the number of calendar days in the school year, excluding Saturdays and Sundays.

(Sec. 4, 73 Stat. 214 (Pub. Law 89-91))

MAURICE W. ROCHE,
Administrative Secretary.

JANUARY 15, 1960.

[F.R. Doc. 60-607; Filed, Jan. 20, 1960; 8:55 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter III—Federal Aviation Agency

SUBCHAPTER C—AIRCRAFT REGULATIONS

[Reg. Docket No. 177; Amdt. 86]

PART 507—AIRWORTHINESS DIRECTIVES

Boeing Model 707 Series Aircraft

A proposal to amend Part 507 of the regulations of the Administrator to include an airworthiness directive requiring modifications of the Boeing Model 707 Series aircraft Mach trim system indicating light electrical circuit and Mach warning bell installation, was published in 24 F.R. 9311.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No objections were received.

In consideration of the foregoing § 507.10(a), (14 CFR Part 507), is hereby amended by adding the following new airworthiness directive:

BOEING. Applies to the following Model 707 Series aircraft only: Serial Numbers 17586 through 17591, 17609 through 17612, 17628 through 17652, 17658 through 17672, 17691, 17696 through 17702, 17925 through 17927.

To increase the capabilities and reliability of the Mach trim warning lights and the Mach warning and fire warning bell systems

the following modification(s) shall be accomplished as indicated:

Unless already completed, the following shall be accomplished by April 30, 1960.

(a) Remove Mach and fire warning bell support bracket, Boeing P/N 69-1640, from below flight engineer's table and rework to accept redesignated warning bell assembly Boeing P/N 69-50013 or equivalent. Install reworked bracket and redesigned components as shown in Boeing Drawing 65-2801.

(Boeing Service Bulletin No. 444 pertains to this same subject.)

(b) Install two diodes, Boeing assembly 69-43070-6, in the Mach trim system resistor box and revise the indicating light circuitry such that this light will indicate when the system is not turned on as well as indicating Mach trim system malfunctions.

(Boeing Service Bulletin No. 474 (R-1) describes a satisfactory modification.)

(Sec. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on January 15, 1960.

E. R. QUESADA,
Administrator.

[F.R. Doc. 60-572; Filed, Jan. 20, 1960;
8:47 a.m.]

SUBCHAPTER E—AIR NAVIGATION REGULATIONS

[Reg. Docket No. 238; Amdt. 56]

PART 610—MINIMUM EN ROUTE IFR ALTITUDES

Miscellaneous Alterations

The minimum en route IFR altitudes appearing hereinafter have been coordinated with interested members of the industry in the regions concerned insofar as practicable. The altitudes are adopted without delay in order to provide for safety in air commerce. Pursuant to authority delegated to me by the Administrator (24 F.R. 5662), I find that a situation exists requiring immediate action in the interest of safety, that notice and public procedure hereon are impracticable, and that good cause exists for making this amendment effective on less than thirty days notice. Part 610 is amended as follows:

Section 610.12 *Green Federal airway 2* is amended to read in part:

From Madison, Wis., LFR; to Milwaukee, Wis., LFR; MEA 2,500.

Section 610.203 *Red Federal airway 8* is amended to delete:

From Wheeling, W. Va., LF/RBN; to Clinton, Pa., LF/RBN; MEA 2,700.

From Clinton, Pa., LF/RBN; to Butler, Pa., LF/RBN; MEA 2,500.

From Butler, Pa., LF/RBN; to Brookville, Pa., LF/RBN; MEA 3,600.

From Brookville, Pa., LF/RBN; to Lock Haven INT, Pa., MEA 4,400.

From Plymouth INT, Pa.; to Stroudsburg INT, Pa.; MEA 3,500.

From Stroudsburg INT, Pa.; to A beam Chatham, N.J., LF/RBN; MEA 2,700.

From A beam Chatham, N.J., LF/RBN; to Newark, N.J., LFR; MEA 2,000.

Section 610.208 *Red Federal airway 8* is amended by adding:

From Plymouth INT, Pa.; to Crystal Lake, Pa., LF/RBN; MEA 3,500.

Section 610.213 *Red Federal airway 13* is amended to delete:

From Providence, R.I., LFR; to Bedford, Mass., LF/RBN; MEA 1,800.

Section 610.213 *Red Federal airway 13* is amended by adding:

From Providence, R.I., LFR; to Franklin INT, Mass.; MEA 1,800.

Section 610.220 *Red Federal airway 20* is amended to delete:

From Cleveland, Ohio, LFR; to Akron, Ohio, LFR; MEA 3,000.

From Akron, Ohio, LFR; to Columbiana INT, Ohio; MEA 2,600.

Section 610.257 *Red Federal airway 57* is deleted.

Section 610.281 *Red Federal airway 81* is deleted.

Section 610.637 *Blue Federal airway 37* is deleted.

Section 610.671 *Blue Federal airway 71* is deleted.

Section 610.1001 *Direct routes—U.S.* is amended to delete:

From Albany, Ga., LFR; to Valdosta, Ga., LF/RBN; MEA 1,600.

From Jacksonville, Fla., LFR; to Valdosta, Ga., LF/RBN; MEA 1,300.

From Lee INT, Fla., to Valdosta, Ga., LF/RBN; MEA 1,400.

From Little Rock, Ark., LFR; to INT. Little Rock, LFR 074 brg and N crs. Stuttgart LFR; MEA 1,500.

From McAlester, Okla., VOR; to Tulsa, Okla., VOR; MEA 2,700.

From Memphis, Tenn., LFR; to INT. Little Rock, LFR 074 brg and N crs. Stuttgart LFR; MEA 1,700.

From Tallahassee, Fla., LFR; to Valdosta, Ga., LF/RBN; MEA 1,500.

From Valdosta, Ga., LF/RBN; to INT. VLD-LF/RBN 200 and TLH-LFR 086; MEA 1,400.

Section 610.1001 *Direct routes, U.S.* is amended by adding:

From Lawton, Okla., VOR; to Fort Sill INT, Okla.; MEA 2,700.

From Fort Sill INT, Okla.; to Bray INT, Okla.; MEA *2,800. *2,600—MOCA.

Section 610.6002 *VOR Federal airway 2* is amended to read in part:

From Jamestown, N. Dak., VOR via N. alter.; to Fargo, N. Dak., VORTAC via N. alter.; MEA 2,800.

From Fargo, N. Dak. VORTAC via N. alter.; to Alexandria, Minn., VOR; via N. alter.; MEA 2,800.

Section 610.6003 *VOR Federal airway 3* is amended to read in part:

From Vero Beach, Fla., VOR; to *Malabar INT, Fla.; MEA *1,500. *3,000—MRA. **1,300—MOCA.

From Malabar INT, Fla.; to Hopkins INT, Fla.; MEA *1,500. *1,300—MOCA.

From St. George INT, S.C.; to Florence, S.C., VOR; MEA *7,000. *1,200—MOCA.

Section 610.6004 *VOR Federal airway 4* is amended to read in part:

From Elkins, W. Va., VOR; to Petersburg INT, W. Va.; MEA 6,400.

From Petersburg INT, W. Va.; to Front Royal, Va., VOR; MEA 5,300.

Section 610.6005 *VOR Federal airway 5* is amended by adding:

From Nashville, Tenn., VOR via E. alter.; to McMinnville INT, Tenn., via E. alter.; MEA 3,500.

From McMinnville INT, Tenn., via E. alter.; to Chattanooga, Tenn., VOR via E. alter.; MEA 4,400.

Section 610.6005 *VOR Federal airway 5* is amended to read in part:

From Bowling Green, Ky., VOR; to New Hope, Ky., VOR; MEA 2,200.

From New Hope, Ky., VOR; to Louisville, Ky., VORTAC; MEA 2,300.

From Louisville, Ky., VORTAC; to *Warsaw INT, Ky.; MEA 2,400. *2,800—MRA.

From Bowling Green, Ky., VOR via E. alter.; to Louisville, Ky., VORTAC via E. alter.; MEA *3,000. *2,400—MOCA.

Section 610.6008 *VOR Federal airway 8* is amended to delete:

From Las Vegas, Nev., VORTAC via S. alter.; to Lakeview INT, Nev., via S. alter.; MEA 6,000.

From Lakeview INT, Nev., via S. alter.; to Mormon Mesa, Nev., VOR via S. alter.; MEA 7,000.

Section 610.6008 *VOR Federal airway 8* is amended by adding:

From Las Vegas, Nev., VORTAC via N. alter.; to Mormon Mesa, Nev., VOR via N. alter.; MEA 8,000.

From Logandale, Nev., FM via N. alter.; to Las Vegas, Nev., VORTAC via N. alter., southwest bound only; MEA 6,500.

Section 610.6011 *VOR Federal airway 11* is amended to read in part:

From Ramsey INT, Tenn.; to *Driver INT, Ark.; MEA **5,000. *3,000—MRA. **1,500—MOCA.

Section 610.6014 *VOR Federal airway 14* is amended to read in part:

From Cleveland, Ohio, VOR via N. alter.; to Fairport INT, Ohio, via N. alter.; MEA 2,000.

From Fairport INT, Ohio, via N. alter.; to Erie, Pa., VOR via N. alter.; MEA 2,500.

Section 610.6016 *VOR Federal airway 16* is amended to read in part:

From *Salt Flat, Tex., VOR; to *Gore INT, Tex.; MEA 10,000. *9,100—MCA Salt Flat VOR, eastbound. **7,200—MCA Gore INT, westbound.

From *Salt Flat, Tex., VOR via N. alter.; to Wink, Tex., VOR via N. alter.; MEA 10,800. *10,000—MCA Salt Flat VOR, northeastbound.

From Nashville, Tenn., VOR; to *Liberty INT, Tenn.; MEA **3,500. *5,000—MRA. **3,300—MOCA.

From Liberty INT, Tenn.; to Crossville, Tenn., VOR; MEA 5,000.

From Nashville, Tenn., VOR via N. alter.; to Hickman INT, Tenn., via N. alter.; MEA *2,500. *2,000—MOCA.

From Hickman INT, Tenn., via N. alter.; to Crossville, Tenn., VOR via N. alter.; MEA 5,000.

Section 610.6016 *VOR Federal airway 16* is amended to delete:

From Graham, Tenn., VOR via S. alter.; to Spring Hill INT, Tenn., via S. alter.; MEA 2,300.

From Spring Hill INT, via S. alter.; to *Rockvale INT, Tenn., via S. alter.; MEA 3,500. *3,500—MRA. **2,300—MOCA.

From Rockvale INT, Tenn., via S. alter.; to Crossville, Tenn., VOR via S. alter.; MEA 5,000.

Section 610.6016 *VOR Federal airway 16* is amended by adding:

From Nashville, Tenn., VOR via S. alter.; to Centertown INT, Tenn., via S. alter.; MEA 3,500.

From Centertown INT, Tenn., via S. alter.; to Crossville, Tenn., VOR via S. alter.; MEA 5,000.

Section 610.6017 *VOR Federal airway 17* is amended to delete:

From Waco, Tex., VOR; to Riovista INT, Tex.; MEA *2,000. *1,900—MOCA.

From Riovista INT, Tex.; to Joshua INT, Tex.; MEA 2,100.

From Joshua INT, Tex.; to Lake Worth INT, Tex.; MEA 2,000.

From Lake Worth INT, Tex.; to Bridgeport, Tex., VOR; 2,400.

From Waco, Tex., VOR via W alter.; to *Mill INT, Tex., via W alter.; MEA **3,800. *3,500—MRA. **2,500—MOCA.

From Mill INT, Tex., via W alter.; to Mineral Wells, Tex., VOR via W alter.; MEA 2,400.

From Mineral Wells, Tex., VOR via W alter.; to Bridgeport, Tex., VOR via W alter.; MEA 2,500.

Section 610.6017 *VOR Federal airway 17* is amended by adding:

From Waco, Tex., VOR; to *Mill INT, Tex.; MEA **3,800. *3,500—MRA. **2,500—MOCA.

From Mill INT, Tex.; to Mineral Wells, Tex., VOR; MEA 2,400.

From Mineral Wells, Tex., VOR; to Bridgeport, Tex., VOR; MEA 2,500.

Section 610.6017 *VOR Federal airway 17* is amended to read in part:

From Laredo, Tex., VOR; to *Webb INT, Tex.; MEA 1,800. *4,000—MRA.

From Webb INT, Tex.; to Cotulla, Tex., VOR; MEA 1,800.

Section 610.6018 *VOR Federal airway 18* is amended to read in part:

From Dallas, Tex., VOR; to Sabine INT, Tex.; MEA 1,600.

From Sabine INT, Tex.; to Quitman, Tex., VOR; MEA 1,800.

Section 610.6020 *VOR Federal airway 20* is amended to read in part:

From Beaumont, Tex., VOR; via N alter.; to *Sulphur INT, La., via N alter.; MEA 1,400. *1,600—MRA.

From Sulphur INT, La., via N alter.; to Lake Charles, La., VOR; via N alter.; MEA 1,400.

From Lake Charles, La., VOR; via N alter.; to *Woodlawn INT, La., via N alter.; MEA 1,400. *2,000—MRA.

From Woodlawn INT, La., via N alter.; to Hathaway INT, La., via N alter.; MEA 1,400.

Section 610.6022 *VOR Federal airway 22* is amended to read in part:

From Tallahassee, Fla., VOR; to *Greenville INT, Fla.; MEA 1,500. *3,500—MRA. From Quitman INT, Ga., via N alter.; to *Greenville INT, Fla., via N alter.; MEA **5,000. *3,500—MRA. **1,200—MOCA.

Section 610.6024 *VOR Federal airway 24* is amended to read in part:

From Aberdeen, S. Dak., VOR; to Watertown, S. Dak., VORTAC; MEA 3,000.

From Watertown, S. Dak., VORTAC; to Redwood Falls, Minn., VOR; MEA 3,000.

From Aberdeen, S. Dak., VOR via N alter.; to Watertown, S. Dak., VORTAC via N alter.; MEA 3,000.

From Watertown, S. Dak., VORTAC via N alter.; to *Madison INT, Minn., via N alter.; MEA **3,700. *3,800—MRA. **3,000—MOCA.

Section 610.6027 *VOR Federal airway 27* is amended to read in part:

From *Paso Robles, Calif., VOR via W alter.; to **Salinas, Calif., VOR via W alter.; MEA 7,000. *8,000—MCA Paso Robles VOR, northbound. **4,000—MCA Salinas VOR, southbound.

Section 610.6030 *VOR Federal airway 30* is amended to read in part:

From Waterville, Ohio, VOR; to Attica, Ohio, VOR; MEA 2,000.

From Attica, Ohio, VOR; to Akron, Ohio, VOR; MEA 2,500.

From Akron, Ohio, VOR; to Youngstown, Ohio, VOR; MEA 2,500.

Section 610.6035 *VOR Federal airway 35* is amended to read in part:

From Albany, Ga., VOR; to Macon, Ga., VOR; MEA 1,700.

Section 610.6038 *VOR Federal airway 38* is amended to read in part:

From Iowa City, Iowa, VOR; to Buffalo INT, Iowa; MEA 2,000.

From Buffalo INT, Iowa; to Moline, Ill., VOR; MEA 2,100.

Section 610.6042 *VOR Federal airway 42* is amended to read in part:

From Cleveland, Ohio, VOR; to Akron, Ohio, VOR; MEA 3,000.

From Akron, Ohio, VOR; to Power Point INT, Ohio; MEA 3,000.

From Power Point INT, Ohio; to Imperial, Pa., VOR; MEA 2,500.

Section 610.6043 *VOR Federal airway 43* is amended to read in part:

From Tiverton, Ohio, VOR; to Navarre, Ohio, VOR; MEA *3,000. *2,500—MOCA.

From Navarre, Ohio, VOR; to Youngstown, Ohio, VOR; MEA 2,500.

Section 610.6047 *VOR Federal airway 47* is amended to read in part:

From Middletown INT, Ohio; to Rosewood, Ohio, VOR; MEA 3,000.

From Rosewood, Ohio, VOR; to Findlay, Ohio, VOR; MEA 2,200.

Section 610.6051 *VOR Federal airway 51* is amended to read in part:

From Crossville, Tenn., VOR; to *Baker-ton INT, Ky.; MEA 5,000. *4,500—MRA.

From Bakerton INT, Ky.; to New Hope, Ky., VOR; MEA 2,000.

From New Hope, Ky., VOR; to Louisville, Ky., VORTAC; MEA 2,300.

From Louisville, Ky., VORTAC; to Nabb, Ind., VOR; MEA 2,100.

From Pahokee, Fla., VOR; to Vero Beach, Fla., VOR; MEA 1,200.

From Vero Beach, Fla., VOR; to *Malabar INT, Fla.; MEA **1,500. *3,000—MRA. **1,300—MOCA.

From Malabar INT, Fla.; to Hopkins INT, Fla.; MEA *1,500. *1,300—MOCA.

Section 610.6051 *VOR Federal airway 51* is amended by adding:

From Biscayne, Fla., VOR via E alter.; to Oakland INT, Fla., via E alter.; MEA 2,000.

From Oakland INT, Fla., via E alter.; to *Hillsboro INT, Fla., via E alter.; MEA **1,800. *1,800—MRA. **1,100—MOCA.

From Hillsboro INT, Fla., via E alter.; to *Pluto INT, Fla., via E alter.; MEA **3,000. *1,500—MRA. **1,100—MOCA.

From Pluto INT, Fla., via E alter.; to Vero Beach, Fla., VOR, via E alter.; MEA *1,500. *1,200—MOCA.

Section 610.6070 *VOR Federal airway 70* is amended to read in part:

From Lafayette, La., VOR; to *Rose INT, La.; MEA 1,300. *2,700—MRA.

From Rose INT, La.; to Baton Rouge, La., VOR; MEA 1,300.

Section 610.6078 *VOR Federal airway 78* is amended to read in part:

From Huron, S. Dak., VOR, via S alter.; to Watertown, S. Dak.; MEA 3,000; VORTAC, via S alter.; MEA *3,100. *3,000—MOCA.

From Watertown, S. Dak., VORTAC; to *Madison INT, Minn.; MEA **3,700. *3,800—MRA. **3,000—MOCA.

From Madison INT, Minn.; to Darwin, Minn., VOR; MEA *4,000. *2,600—MOCA.

From Darwin, Minn., VOR; to Minneapolis, Minn., VOR; MEA 2,400.

Section 610.6084 *VOR Federal airway 84* is amended to read in part:

From Hinckley INT, Ill.; to Northbrook, Ill., VOR; MEA 2,200.

Section 610.6084 *VOR Federal airway 84* is amended to delete:

From Lansing, Mich., VOR; to Selfridge, Mich., VOR; MEA 2,900.

From Selfridge, Mich., VOR; to U.S. Canadian Border; MEA 2,500.

Section 610.6084 *VOR Federal airway 84* is amended by adding:

From Lansing, Mich., VOR; to Flint, Mich., VOR; MEA 2,400.

From Flint, Mich., VOR; to Peck, Mich., VOR; MEA 2,200.

From Peck, Mich., VOR; to London, Ont., Canada, VOR; MEA #2,100. #For that airspace over U.S. Territory.

Section 610.6094 *VOR Federal airway 94* is amended to read in part:

From *Salt Flat, Tex., VOR; to **Caverns INT, N. Mex.; MEA 10,800. *10,000—MCA Salt Flat VOR, northeast bound. **10,800—MCA Caverns INT, southwest bound.

Section 610.6100 *VOR Federal airway 100* is amended to delete:

From Keeler, Mich., VOR to Jackson, Mich., VOR; MEA 2,300.

From Jackson, Mich., VOR; to Salem, Mich., VOR; MEA 2,400.

Section 610.6106 *VOR Federal airway 106* is amended to delete:

From Morgantown, W. Va., VOR; to Union-town, Pa., VOR; MEA 4,500.

From Uniontown, Pa., VOR; to Johnstown, Pa., VOR; MEA 5,000.

Section 610.6106 *VOR Federal airway 106* is amended by adding:

From Morgantown, W. Va., VOR; to Indian Head, Pa., VOR; MEA 5,000.

From Indian Head, Pa., VOR; to Johnstown, Pa., VOR; MEA 5,000.

Section 610.6113 *VOR Federal airway 113* is amended to delete:

From Armock INT, N.Y.; to Riverhead, N.Y., VOR; MEA 2,000.

Section 610.6114 *VOR Federal airway 114* is amended to read in part:

From Dallas, Tex., VOR via N alter.; to Sabine INT, Tex., via N alter.; MEA 1,600.

From Sabine INT, Tex., via N alter.; to Quitman, Tex., VOR via N alter.; MEA 1,800.

Section 610.6115 *VOR Federal airway 115* is amended by adding:

From Birmingham, Ala., VOR via E alter.; to Gadsden, Ala., VOR via E alter.; MEA 3,000.

From Gadsden, Ala., VOR via E alter.; to Chattanooga, Tenn., VOR via E alter.; MEA 4,000.

Section 610.6116 *VOR Federal airway 116* is amended to read in part:

From Peoria, Ill., VOR; to Marseilles INT, Ill.; MEA 2,000.

From Marseilles INT, Ill.; to Joliet, Ill., VOR; MEA 2,100.

Section 610.6116 *VOR Federal airway 116* is amended to delete:

From Keeler, Mich., VOR; to Jackson, Mich., VOR; MEA 2,300.

From Jackson, Mich., VOR; to Salem, Mich., VOR; MEA 2,400.

Section 610.6123 *VOR Federal airway 123* is amended to read in part:

From Columbus INT, N.J.; to Robbinsville, N.J., VOR; MEA 1,800.

Section 610.6126 *VOR Federal airway 126* is amended by adding:

From Armock INT, N.Y.; to Riverhead, N.Y., VOR; MEA 2,000.

Section 610.6140 *VOR Federal Airway 140* is amended by adding:

From Nashville, Tenn., VOR via S alter.; to *Shopsprings INT, Tenn., via S alter.; **2,500. *3,000—MRA. **2,000—MOCA.

From Shopsprings INT, Tenn., via S alter.; to Hickman INT, Tenn., via S alter.; MEA *2,500. *2,000—MOCA.

From Hickman INT, Tenn., via S alter.; to London, Ky., VOR via S alter.; MEA 4,000.

Section 610.6140 *VOR Federal airway 140* is amended to read in part:

From Dyersburg, Tenn., VOR; to Bradford INT, Tenn.; MEA 1,700.

From Bradford INT, Tenn.; to Milan INT, Tenn.; MEA 1,500.

From Milan INT, Tenn.; to McEwen INT, Tenn.; MEA *3,000. *1,900—MOCA.

From McEwen INT, Tenn.; to Burns INT, Tenn.; MEA *2,000. *1,900—MOCA.

From Burns INT, Tenn.; to Nashville, Tenn., VOR; MEA 3,000.

From Nashville, Tenn., VOR; to *Lebanon INT, Tenn.; MEA 2,000. *2,300—MRA.

From Lebanon INT, Tenn.; to *Hartsville INT, Tenn.; MEA 2,000. *2,400—MRA.

From Hartsville INT; to London, Ky., VOR; MEA *4,500. *3,800—MOCA.

From London, Ky., VOR; to Bluefield, W. Va., VOR; MEA 6,000.

From Freedom INT, Tenn., via N alter.; to London, Ky., VOR via N alter.; MEA *4,500. *3,200—MOCA.

Section 610.6157 *VOR Federal airway 157* is amended to read in part:

From St. George INT, S.C.; to Florence, S.C., VOR; MEA *7,000. *1,200—MOCA.

Section 610.6158 *VOR Federal airway 158* is amended to read in part:

From Dubuque, Iowa, VOR; to Polo, Ill., VOR; MEA 6,800.

Section 610.6159 *VOR Federal airway 159* is amended to read in part:

From New River INT, Fla.; to *Hillsboro INT, Fla.; MEA 1,200. *1,800—MRA.

From Hillsboro INT, Fla.; to W. Palm Beach, Fla., VOR; MEA 1,200.

From *Monet INT, Fla., via W alter.; to *Pluto INT, Fla., via W alter.; MEA 1,200. *2,000—MRA. **1,500—MRA.

From Pluto INT, Fla., via W alter.; to Dixie Ranch INT, Fla., via W alter.; MEA 1,200. *1,500—MRA.

From Gainesville, Fla., VOR; to *Greenville INT, Fla.; MEA *5,500. *3,500—MRA. **1,500—MOCA.

From Perry INT, Fla., via W alter.; to *Greenville INT, Fla., via W alter.; MEA *3,500. *3,500—MRA. **1,200—MOCA.

From Vero Beach, Fla., VOR via E alter.; to *Malabar INT, Fla., via E alter.; MEA **1,500. *3,000—MRA. **1,300—MOCA.

From Malabar INT, Fla., via E alter.; to *Winder INT, Fla., via E alter.; **1,500. *3,200—MRA. **1,300—MOCA.

From Albany, Ga., VOR; to *Shellman INT, Ga.; MEA 1,700. *2,500—MRA.

From Shellman INT, Ga.; to *Sawmill INT, Ga.; MEA 1,700. *2,000—MRA.

From Sawmill INT, Ga.; to Eufaula, Ala., VOR; MEA 1,700.

Section 610.6161 *VOR Federal airway 161* is amended to read in part:

From Ft. Worth, Tex., VOR; to Justin INT, Tex.; MEA 2,200.

Section 610.6166 *VOR Federal airway 166* is amended to delete:

From Hoopes INT, Del.; to Philadelphia, Pa., ILS loc.; MEA 1,800.

From Philadelphia, Pa., ILS loc.; to Mount Holly INT, N.J.; MEA 1,800.

From Mount Holly INT, N.J.; to Colts Neck, N.J., VOR; MEA 1,500.

Section 610.6166 *VOR Federal airway 166* is amended by adding:

From New Castle, Del., VOR; to Robbinsville, N.J., VOR; MEA 1,800.

From Robbinsville, N.J., VOR; to Colts Neck, N.J., VOR; MEA 1,400.

Section 610.6174 *VOR Federal airway 174* is amended to read in part:

From Elkins, W. Va., VOR; to Moorefield INT, W. Va.; MEA 6,800.

From Moorefield INT, W. Va.; to Linden, Va., VOR; MEA 5,300.

From Linden, Va., VOR; to Springfield INT, Va.; MEA 4,000.

From Springfield INT, Va.; to Washington, D.C., VOR; MEA 1,800.

Section 610.6178 *VOR Federal airway 178* is amended by adding:

From Paducah, Ky., VOR; to Central City, Ky., VOR; MEA 2,000.

From Central City, Ky., VOR; to New Hope, Ky., VOR; MEA 3,000.

From New Hope, Ky., VOR; to Lexington, Ky., VOR; MEA 3,000.

Section 610.6194 *VOR Federal airway 194* is amended to read in part:

From Lafayette, La., VOR; to *Rose INT, La.; MEA 1,800. *2,700—MRA.

From Rose INT, La.; to Baton Rouge, La., VOR; MEA 1,300.

Section 610.6209 *VOR Federal airway 209* is amended to read in part:

From Citronelle INT, Ala.; to Yarbo INT, Ala.; MEA 1,600.

From Yarbo INT, Ala.; to Butler INT, Ala.; MEA *3,200. *1,600—MOCA.

From Butler INT, Ala.; to *York INT, Ala.; MEA **4,700. *2,500—MRA. **1,600—MOCA.

Section 610.6210 *VOR Federal airway 210* is amended by adding:

From Goffs, Calif., VOR via S alter.; to Peach Springs, Ariz., VOR via S alter.; MEA 9,000.

From Peach Springs, Ariz., VOR via S alter.; to Tuba City, Ariz., VOR via S alter.; MEA 11,000.

Section 610.6210 *VOR Federal airway 210* is amended to read in part:

From *Cowan INT, Ohio; to Rosewood, Ohio, VOR; MEA 3,500.

From Rosewood, Ohio, VOR; to Grindell INT, Ohio; MEA 2,700.

Section 610.6211 *VOR Federal airway 211* is amended to read in part:

From Ft. Stockton, Tex., VOR; to *Ozona INT, Tex.; MEA **8,000. *5,000—MRA. **4,300—MOCA.

Section 610.6216 *VOR Federal airway 216* is amended to read in part:

From Lamoni, Iowa, VOR; to Ottumwa, Iowa, VOR; MEA 2,300.

Section 610.6216 *VOR Federal airway 216* is amended by adding:

From Saginaw, Mich., VOR; to Peck, Mich., VOR; MEA 2,600.

From Peck, Mich., VOR; to Toronto, Ont., Canada VOR; MEA #*3,700. #For that airspace over U.S. territory. *2,100—MOCA.

Section 610.6218 *VOR Federal airway 218* is amended to read in part:

From Malta INT, Ill.; to Naperville, Ill., VOR; MEA 2,200.

Section 610.6222 *VOR Federal airway 222* is amended to read in part:

From Ft. Stockton, Tex., VOR; to *Ozona INT, Tex.; MEA **8,000. *5,000—MRA. **4,300—MOCA.

From Orange INT, Tex., via N alter.; to *Sulphur INT, La., via N alter.; MEA 1,400. *1,600—MRA.

From Sulphur INT, La., via N alter.; to Lake Charles, La., VOR via N alter.; MEA 1,400.

From Lake Charles, La., VOR; to *Woodlawn INT, La.; MEA 1,400. *2,000—MRA.

From Woodlawn INT, La.; to Hathaway INT, La.; MEA 1,400.

Section 610.6240 *VOR Federal airway 240* is amended to read in part:

From New Orleans, La., VOR; to *Harbor INT, Miss.; MEA 2,000. *3,400—MRA.

From Harbor INT, Miss.; to Dog INT, Ala.; MEA *3,400. *1,100—MOCA.

Section 610.6243 *VOR Federal airway 243* is amended to read in part:

From Chattanooga, Tenn., VOR; to McMinnville INT, Tenn.; MEA 4,400.

From McMinnville INT, Tenn.; to *Liberty INT, Tenn.; MEA **5,000. *5,000—MRA. **4,200—MOCA.

From Liberty INT, Tenn.; to *Hartsville INT, Tenn.; MEA **5,000. *2,400—MRA. **4,200—MOCA.

Section 610.6244 *VOR Federal airway 244* is amended by adding:

From Hanksville, Utah, VOR; to La Sal, Utah, VOR; MEA 12,000.

From La Sal, Utah, VOR; to Bedrock INT, Utah; MEA 12,000.

From Bedrock INT, Utah; to Gunnison, Colo., VOR; MEA 14,000.

From Gunnison, Colo., VOR; to *Coaldale INT, Colo.; MEA 16,000. *17,000—MRA.

From Coaldale INT, Colo.; to *Pueblo, Colo., VOR, westbound, MEA 16,000; eastbound, MEA 12,000. *10,000—MCA Pueblo VOR, westbound.

Section 610.6246 *VOR Federal airway 246* is amended to read in part:

From Rosewood, Ohio, VOR; to Marlon INT, Ohio; MEA 2,700.

Section 610.6255 *VOR Federal airway 255* is amended to read in part:

From Burlington, Iowa, VOR; to Moline, Ill., VOR; MEA 2,100.

Section 610.6257 *VOR Federal airway 257* is amended to read in part:

From Drake, Ariz., VOR; to Floyd INT, Ariz.; northbound, MEA 11,000; southbound, MEA 10,000.

Section 610.6262 *VOR Federal airway 262* is amended to read in part:

From Bradford, Ill., VOR; to Joliet, Ill., VOR; MEA 2,100.

Section 610.6277 *VOR Federal airway 277* is amended to read in part:

From Rosewood, Ohio, VOR; to Fort Wayne, Ind., VOR; MEA 2,300.

Section 610.6284 *VOR Federal airway 284* is amended to read in part:

From Fort Stockton, Tex., VOR; to *Ozona INT, Tex.; MEA **8,000. *5,000—MRA. **4,300—MOCA.

Section 610.6286 *VOR Federal airway 286* is amended to read in part:

From Front Royal, Va., VOR; to Casanova, Va., VOR; MEA 4,000.

From Casanova, Va., VOR; to Brooke, Va., VOR; MEA 1,500.

Section 610.6435 VOR Federal airway 435 is amended to read:

From Rosewood, Ohio, VOR; to Attica, Ohio, VOR; MEA 2,500.

Section 610.6437 VOR Federal airway 437 is amended to read in part:

From Charleston, S.C., VOR via W alter.; to *Lane INT, S.C., via W alter.; MEA 1,500. *1,700—MRA.

From Lane INT, S.C., via W alter.; to Florence, S.C., VOR via W alter.; MEA 1,500.

Section 610.6454 VOR Federal airway 454 is amended to read in part:

From Atlanta, Ga., VOR; to Conyers INT, Ga.; MEA 2,200.

From Conyers INT, Ga.; to Athens, Ga., VOR; MEA 3,000.

Section 610.6472 VOR Federal airway 472 is added to read:

From Franklin, Va., VOR; to Elizabeth City, N.C., VOR; MEA 1,400.

Section 610.6481 VOR Federal airway 481 is added to read:

From Fargo, N. Dak., VORTAC; to Grand Forks, N. Dak., VOR; MEA 2,300.

From Fargo, N. Dak., VORTAC via E alter.; to Grand Forks, N. Dak., VOR via E alter.; MEA 2,300.

Section 610.6606 VOR Federal airway 1506 is amended to delete:

From Keeler, Mich., VOR; to LeRoy INT, Mich.; MEA 2,300.

Section 610.6608 VOR Federal airway 1508 is amended to read in part:

From Myton, Utah, VOR; to *Yampa INT, Colo.; MEA *18,000. *18,000—MRA. *11,000—MOCA.

From Yampa INT, Colo.; to Albany INT, Wyo.; MEA *18,000. *14,000—MOCA. #Continuous navigation signal coverage does not exist over the entire route segment below 21,000 feet.

Section 610.6608 VOR Federal airway 1508 is amended to delete:

From Keeler, Mich., VOR; to LeRoy INT, Mich.; MEA 2,300.

Section 610.6610 VOR Federal airway 1510 is amended to read in part:

From Iowa City, Iowa, VOR; to Buffalo INT, Iowa; MEA 2,000.

From Buffalo INT, Iowa; to Moline, Ill., VOR; MEA 2,100.

Section 610.6616 VOR Federal airway 1516 is amended to read in part:

From Clark INT, Calif.; to *Goffs, Calif., VOR; MEA 12,000. *8,000—MCA Goffs VOR, northwestbound.

From Elkins, W. Va., VOR; to Moorefield INT, W. Va.; MEA 6,800.

From Moorefield INT, W. Va.; to Linden, Va., VOR; MEA 5,300.

From Linden, Va., VOR; to Springfield INT, Va.; MEA 4,000.

From Springfield INT, Va.; to Washington, D.C., VOR; MEA 1,800.

Section 610.6618 VOR Federal airway 1518 is amended to read in part:

From Dyersburg, Tenn., VOR; to Bradford INT, Tenn.; MEA 1,700.

From Bradford INT, Tenn.; to Milan INT, Tenn.; MEA 1,500.

From Milan INT, Tenn.; to McEwen INT, Tenn.; MEA *3,000. *1,900—MOCA.

From McEwen INT, Tenn.; to Burns INT, Tenn.; MEA *2,000. *1,900—MOCA.

From Burns INT, Tenn.; to Nashville, Tenn., VOR; MEA 3,000.

From Nashville, Tenn., VOR; to *Lebanon INT, Tenn.; MEA 2,000. *2,300—MRA.

From Lebanon INT, Tenn.; to *Hartsville INT, Tenn.; MEA 2,000. *2,400—MRA.

From Hartsville INT, Tenn.; to London, Ky., VOR; MEA *4,500. *3,800—MOCA.

From London, Ky., VOR; to Bluefield, W. Va., VOR; MEA 6,000.

From Bluefield, W. Va., VOR; to Montebello, Va., VOR; MEA 6,000.

Section 610.6622 VOR Federal airway 1522 is amended to read in part:

From *Hueco Mt. INT, Tex.; to **Salt Flat, Tex., VOR; MEA 8,000. *8,800—MRA. *9,100—MCA Salt Flat VOR, eastbound.

Section 610.6631 VOR Federal airway 1531 is amended to read in part:

From Wells, Nev., VOR; to *Howard INT, Utah; MEA *15,000. *15,000—MRA. **11,000—MOCA.

From Howard INT, Utah; to *Rehn Ranch INT, Idaho; MEA *15,000. *11,500—MCA Rehn Ranch INT, southwestbound. **12,500—MOCA.

Section 610.6635 VOR Federal airway 1535 is amended to read in part:

From *Missoula, Mont., VOR; to **Elk INT, Mont.; MEA ***17,000. *10,500—MCA Missoula VOR, southwestbound. *14,000—MCA Missoula VOR, northeastbound. **17,000—MRA. ***11,000—MOCA.

From Elk INT, Mont.; to *Cut Bank, Mont., VOR; MEA *17,000. *8,000—MCA Cut Bank VOR, southwestbound. **11,000—MOCA.

(Secs. 313(a), 307(c), 72 Stat. 752, 749; 49 U.S.C. 1354(a), 1348(c))

These rules shall become effective February 11, 1960.

Issued in Washington, D.C., on January 14, 1960.

B. PUTNAM,

Acting Director,

Bureau of Flight Standards.

[F.R. Doc. 60-522; Filed, Jan. 20, 1960; 8:45 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 7310 c.o.]

PART 13—PROHIBITED TRADE PRACTICES

Empire Fur Co.

Subpart—Advertising falsely or misleadingly: § 13.155 Prices: 13.155-25 Coupon, certificate, check, credit voucher, etc., values; 13.155-45 Fictitious marking. Subpart—Invoicing products falsely: § 13.1108 Invoicing products falsely: 13.1108-45 Fur Products Labeling Act. Subpart—Misbranding or mislabeling: § 13.1212 Formal regulatory and statutory requirements: 13.1212-30 Fur Products Labeling Act. Subpart—Misrepresenting oneself and goods—PRICES: § 13.1790 Coupons, credit vouchers, etc., of specified value; § 13.1810 Fictitious marking. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1845 Composition: 13.1845-30 Fur Products Labeling Act; § 13.1865 Manufacture or

preparation: 13.1865-40 Fur Products Labeling Act; § 13.1886 Quality, grade or type; § 13.1900 Source or origin: 13.1900-40 Fur Products Labeling Act: 13.1900-40(b) Place.

(Sec. 6, 38 Stat. 722; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f) [Cease and desist order, William M. Hooks trading as Empire Fur Co., San Diego, Calif., Docket 7310, November 26, 1959]

In the Matter of William M. Hooks, an Individual Trading as Empire Fur Co.

This proceeding was heard by a hearing examiner on the complaint of the Commission charging a furrier in San Diego, Calif., with violating the Fur Products Labeling Act by failing to comply with labeling requirements; by setting forth fictitious sales prices on invoices; by advertising in newspapers and letters to prospective purchasers with credit checks enclosed which failed to disclose the names of animals producing certain furs, the country of origin of imported furs, and the fact that some fur products were artificially colored and to give other required information, and represented falsely that said credit checks would reduce the price of furs; and by failing to maintain records on which such pricing claims were based.

After acceptance of an agreement for a consent order, the hearing examiner made his initial decision and order to cease and desist which became on November 26 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondent William M. Hooks, individually and trading as Empire Fur Co., Dependable Fur Company, or under any other trade name, and respondent's representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction into commerce or the sale, advertising, offering for sale, transportation or distribution, in commerce, of fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur", and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Failing to affix labels to fur products showing in words and figures plainly legible:

(a) All of the information required to be disclosed by each of the subsections of section 4(2) of the Fur Products Labeling Act;

(b) The item number or mark assigned to a fur product;

(c) The complete term "Mouton-processed Lamb", when an election is made to use that description instead of merely the animal name "Lamb".

2. Setting forth on labels attached to fur products:

(a) Information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder in abbreviated form;

(b) Information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations thereunder mingled with nonrequired information.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish to purchasers of fur products invoices showing all of the information required to be disclosed by each of the subsections of section 5(b) (1) of the Fur Products Labeling Act;

2. Setting forth on invoices furnished to purchasers of fur products fictitious sales prices;

3. Failing to set forth on each invoice the item number or mark assigned to a fur product;

C. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public announcement, or notice which is intended to aid, promote or assist, directly or indirectly, in the sale or offering for sale of fur products and which:

1. Fails to disclose:

(a) The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations.

(b) That the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact.

(c) The name of the country of origin of any imported furs contained in a fur product.

2. Fails to set forth the complete term "Mouton-processed Lamb", when an election is made to use that description instead of merely the animal name "Lamb".

3. Fails to set forth the information required under section 5(a) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder in type of equal size and conspicuousness and in close proximity with each other.

Represents, directly or by implication, that the regular or usual price of any fur product is any amount which is in excess of the price at which the respondent has usually and customarily sold such products in the recent regular course of his business.

5. Misrepresents in any manner the amount of savings available to purchasers of its fur products, or the amount by which the prices of its fur products are reduced from the prices at which said products are usually and regularly sold by it in the recent regular course of its business.

6. Makes use of comparative prices or percentage savings claims unless such compared prices or percentage savings are based upon current market values or unless a bona fide price at a designated time is stated.

D. Making pricing claims or representations in advertisements respecting reduced prices of furs or fur products, unless respondent maintains full and adequate records disclosing the facts upon which such claims or representations are based.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is further ordered, That the respondent herein shall within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist.

Issued: November 25, 1959.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F.R. Doc. 60-584; Filed, Jan. 20, 1960;
8:49 a.m.]

[Docket 7577 c.o.]

PART 13—PROHIBITED TRADE PRACTICES

Belber Trunk & Bag Co. et al.

Subpart—Furnishing means and instrumentalities of misrepresentation or deception: § 13.1055-50 Preticketing merchandise misleadingly. Subpart—Misbranding or mislabeling: § 13.1280 Price. Subpart—Misrepresenting oneself and goods—Prices: § 13.1805 Exaggerated as regular and customary; § 13.1811 Fictitious preticketing.

(Sec. 6, 38 Stat 722; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Belber Trunk & Bag Company et al., Philadelphia, Pa., Docket 7577, November 28, 1959]

In the Matter of Belber Trunk & Bag Company, a Corporation, and Jack Brier, Individually and as an Officer of Said Corporation

This proceeding was heard by a hearing examiner on the complaint of the Commission charging Philadelphia manufacturers with attaching to luggage before shipment to retailers for resale, price tags bearing fictitious and excessive prices represented thereby as the usual retail prices.

After acceptance of an agreement containing a consent order the hearing examiner made his initial decision and order to cease and desist which became on November 28 the decision of the commission.

The order to cease and desist is as follows:

It is ordered, That respondents Belber Trunk & Bag Company, a corporation, and its officers, and Jack Brier, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of luggage or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing by preticketing or in any other manner, that any amount is the usual and regular retail price of

merchandise when such amount is in excess of the price at which said merchandise is usually and regularly sold at retail in the trade area or areas where the representations are made.

2. Putting any plan into operation whereby retailers or others may misrepresent the regular and usual retail prices of merchandise.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: November 27, 1959.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F.R. Doc. 60-585; Filed, Jan. 20, 1960;
8:50 a.m.]

[Docket 7376 c.o.]

PART 13—PROHIBITED TRADE PRACTICES

National School of Chemistry

Subpart—Advertising falsely or misleadingly: § 13.60 Earnings and profits; § 13.143 Opportunities; § 13.190 Results; § 13.205 Scientific or other relevant facts.

(Sec. 6, 38 Stat. 722; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Milton B. Engel et al. doing business as National School of Chemistry, Redwood City, Calif., Docket 7376, December 2, 1959]

In the Matter of Milton B. Engel and Alice Engel, Individually and as Co-Partners Doing Business as National School of Chemistry

This proceeding was heard by a hearing examiner on the complaint of the Commission charging Redwood City, Calif., sellers of an elementary correspondence course in practical chemistry at the high school level, with representing falsely in newspaper advertisements that persons completing the course would be trained, qualified, recognized, and employed as chemists, could analyze any known substance, and would be able to earn the same income as various professional men and skilled workers.

After acceptance of an agreement for a consent order, the hearing examiner made his initial decision and order to cease and desist which became on December 2 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondents Milton B. Engel and Alice Engel, as individuals or as co-partners trading and doing business as National School of Chemistry, or under any other trade name, and respondents' agents, representatives and

employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of respondents' courses of study and instruction, including a course of instruction in chemistry, or the supplies and equipment used in connection therewith, or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. That persons completing respondents' said chemistry course will be trained, qualified, recognized or employed as a chemist; or that persons completing any of respondents' said courses of study and instruction will be trained, qualified, recognized or employed in any profession or vocation other than as actually so afforded or provided by said courses of study and instruction.

2. That persons completing said chemistry course will acquire a complete, thorough or basic knowledge of chemistry; or that any of respondents' said courses of study and instruction afford or provide an amount or degree of training or instruction greater than is in fact provided.

3. That persons completing said chemistry course can analyze or duplicate any known substances; or that persons completing any of respondents' said courses of study and instruction will be trained, instructed or otherwise made able to do or perform any methods, procedures, skills or techniques in any occupation or profession to a degree of proficiency greater than is the fact.

4. That persons completing said chemistry course will be enabled thereby to earn an income equivalent to that earned by doctors, dentists, chemists or other professional persons or by printers, electricians or other skilled workers; or that the income of persons completing said courses of study and instruction will be any amount greater than that generally received by persons with the same background and training as that afforded by said courses of study and instruction and employed in the profession or occupation in which instruction and training is afforded by said courses of study and instruction.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: December 2, 1959.

By the Commission.

[SEAL]

ROBERT M. PARRISH,
Secretary.

[FR. Doc. 60-586; Filed, Jan. 20, 1960;
8:50 a.m.]

Title 20—EMPLOYEES' BENEFITS

Chapter II—Railroad Retirement Board

PART 237—INSURANCE ANNUITIES AND LUMP SUMS FOR SURVIVORS

Miscellaneous Amendments

Pursuant to the general authority contained in section 10 of the act of June 24, 1937 (50 Stat. 314, 45 U.S.C. 228(j)), §§ 237.101, 237.102(a) and (d), 237.103 (b), 237.201, 237.202, 237.203 and 237.204 of Part 237 (20 C.F.R. 237.101, 237.102, 237.103, 237.201, 237.202, 237.203 and 237.204) of the Regulations under such act are amended by Board Order 59-232, dated December 30, 1959, to read as follows:

§ 237.101 Statutory provisions.

An employee will have been "completely insured" if it appears to the satisfaction of the Board that at the time of his death, whether before or after the enactment of this section, he will have completed ten years of service and will have had the qualifications set forth in any one of the following paragraphs:

(i) a current connection with the railroad industry; and a number of quarters of coverage, not less than six, and at least equal to one-half of the number of quarters, elapsing in the period after 1936, or after the quarter in which he will have attained the age of twenty-one, whichever is later, and up to but excluding the quarter in which he will have attained the age of sixty-five years or died, whichever will first have occurred (excluding from the elapsed quarters any quarter which is not a quarter of coverage and during any part of which a retirement annuity will have been payable to him); and if the number of such elapsed quarters is an odd number such number shall be reduced by one; or

(ii) a current connection with the railroad industry; and either will have had forty or more quarters of coverage or would be fully insured under title II of the Social Security Act if his service as an employee after December 31, 1936, were included in the term "employment" as defined in that Act; or

(iii) a pension will have been payable to him; or a retirement annuity based on service of not less than ten years (as computed in awarding the annuity) will have begun to accrue to him before 1948. (Section 5(1) (7) of the act.)

An employee will have been "partially insured" at the time of his death, whether before or after the enactment of this section, if it appears to the satisfaction of the Board that he will have completed ten years of service and (i) will have had a current connection with the railroad industry; and (ii) either will have had six or more quarters of coverage in the period ending with the quarter in which he will have died or in which a retirement annuity will have begun to accrue to him and beginning with the third calendar year next preceding the year in which such event occurs, or would be currently insured under title II of the Social Security Act if his service as an employee after December 31, 1936, were included in the term "employment" as defined in that Act. (Section 5(1) (8) of the act.)

An individual shall be deemed to have "a current connection with the railroad industry" at the time an annuity begins to accrue to him and at death if, in any thirty consecutive calendar months before the month in which an annuity under section 2 begins to accrue to him (or the month in which he

dies if that first occurs), he will have been in service as an employee in not less than twelve calendar months and, if such thirty calendar months do not immediately precede such month, he will not have been engaged in any regular employment other than employment for an employer in the period before such month and after the end of such thirty months. For the purposes of section 5 only, an individual shall be deemed also to have a "current connection with the railroad industry" if he is in all other respects completely insured but would not be fully insured under the Social Security Act, or if he is in all other respects partially insured but would be neither fully nor currently insured under the Social Security Act, or if he has no wage quarters of coverage. (Section 1(o) of the act.)

The term "quarter of coverage" shall mean a compensation quarter of coverage or a wage quarter of coverage, and the term "quarters of coverage" shall mean compensation quarters of coverage, or wage quarters of coverage, or both: *Provided*, That there shall be for a single employee no more than four quarters of coverage for a single calendar year. (Section 5(1) (3) of the act.)

The term "compensation quarter of coverage" shall mean any quarter of coverage computed with respect to compensation paid to an employee after 1936 in accordance with the following table:

Months of service in a calendar year	Total compensation paid in the calendar year				
	Less than \$50	\$50 but less than \$100	\$100 but less than \$150	\$150 but less than \$200	\$200 or more
1-3-----	0	1	1	1	1
4-8-----	0	1	2	2	2
7-9-----	0	1	2	3	3
10-12-----	0	1	2	3	4

(Section 5(1) (4) of the act.)

The term "wage quarter of coverage" shall mean any quarter of coverage determined in accordance with the provisions of Title II of the Social Security Act. (Section 5(1) (5) of the act.)

§ 237.102 Completely insured status.

(a) *Payments based upon, and existence of, completely insured status.* (1) All insurance annuities and lump sums, other than a residual lump sum, for survivors are conditioned upon an employee's insured status. This status is determined by the employee's service, compensation, and wage history. Unless the employee was completely insured at death, his widow cannot become entitled to a widow's insurance annuity, her widower cannot become entitled to a widower's insurance annuity, and his or her surviving parent cannot become entitled to a parent's insurance annuity on the basis of the employee's earnings.

(2) For the purpose of determining whether an employee was completely insured at death, it is immaterial whether his death occurred before, on, or after the enactment date of section 5 of the act.

(3) An employee was completely insured at death if:

(i) He had completed at least 10 years of service, had acquired the number of quarters of coverage specified in paragraph (d) of this section, and had a

current connection with the railroad industry at the time of his death; or

(ii) He had completed at least 10 years of service, would be fully insured under title II of the Social Security Act if his service after 1936 were included in the term "employment" as defined in that act, and had a current connection with the railroad industry at the time of his death, provided that his death occurred on or after September 6, 1958 (or before that date if none of his survivors became entitled earlier to monthly benefits under title II of the Social Security Act by reason of his death); or

(iii) There had been payable to him a pension under section 6 of the act; or

(iv) There had begun to accrue to him before 1948 a retirement annuity based on not less than 10 years of service (as computed in awarding the annuity).

(d) *Determination of completely insured status on basis of quarters of coverage and current connection.* An employee, whether or not he was completely insured at death by virtue of having been a pensioner or an annuitant, could have been completely insured at the time of his death if at that time he had completed at least 10 years of service, had a current connection with the railroad industry, and had at least 40 quarters of coverage; or had quarters of coverage at least equal to one-half the number of elapsed quarters after 1936 but not less than six; or had sufficient quarters of coverage to be fully insured under title II of the Social Security Act if his service after 1936 were included in the term "employment" as defined in that act, provided that his death occurred on or after September 6, 1958 (or before that date if none of his survivors became entitled earlier to monthly benefits under title II of the Social Security Act by reason of his death). In the case of an employee who, at the time of his death, had completed at least 10 years of service and had a current connection with the railroad industry, the determination of required quarters of coverage under provisions other than those of title II of the Social Security Act is made as follows:

(1) *Elapsed quarters.* Take the number of calendar quarters which have elapsed after 1936, or after the quarter in which the employee attained the age of 21 if he attained such age after 1936, and up to but excluding the quarter in which the employee attained the age of 65 or died, whichever occurred first. Subtract from that number of elapsed quarters the number of such quarters during any part of which a retirement annuity was payable to the employee. If the resulting number of elapsed quarters is an odd number, subtract one. Take one-half of the number of elapsed quarters thus obtained, and the resulting number, if six or more, is the number of quarters of coverage required; if the resulting number is less than six, the number of quarters of coverage required is six.

(2) *Quarters of coverage determined.*

(i) Determine the number of quarters of coverage the employee had acquired. If this number equals or exceeds the number required, the employee was completely insured.

(ii) A quarter of coverage may be acquired at any time subsequent to December 31, 1936, regardless of whether there are any elapsed quarters under subparagraph (1) of this paragraph and regardless of the age of the employee.

(iii) Quarters of coverage need not be consecutive and no particular order of their acquisition is required.

§ 237.103 Partially insured status.

(b) *Determination of partially insured status.* (1) An employee was partially insured at death if he had completed at least 10 years of service, had a current connection with the railroad industry, and:

(i) Had at least six quarters of coverage in the period beginning with the third year before the year of retirement or death and ending with the quarter in which such event occurred; or

(ii) Had sufficient quarters of coverage to be currently insured under title II of the Social Security Act if his service after 1936 were included in the term "employment" as defined in that act, provided that his death occurred on or after September 6, 1958 (or before that date if none of his survivors became entitled earlier to monthly benefits under title II of the Social Security Act by reason of his death).

(2) Quarters of coverage need not be consecutive and no particular order of their acquisition is required.

§ 237.201 Statutory provisions.

The term "basic amount" shall mean:

(i) for an employee who will have been partially insured, or completely insured solely by virtue of paragraph (7)(i) or (7)(ii) or both: the sum of (A) 49 per centum of his average monthly remuneration, up to and including \$75; plus (B) 12 per centum of such average monthly remuneration exceeding \$75 and up to and including \$400, plus (C) 1 per centum of the sum of (A) plus (B) multiplied by the number of years after 1936 in each of which the compensation, wages, or both, paid to him will have been equal to \$200 or more; if the basic amount, thus computed, is less than \$16.95 it shall be increased to \$16.95;

(ii) for an employee who will have been completely insured solely by virtue of paragraph (7)(iii): the sum of 49 per centum of his monthly compensation if an annuity will have been payable to him, or, if a pension will have been payable to him, 49 per centum of the average monthly earnings on which such pension was computed, up to and including \$75, plus 12 per centum of such compensation or earnings exceeding \$75 and up to and including \$300. If the average monthly earnings on which a pension payable to him was computed are not ascertainable from the records in the possession of the Board, the amount computed under this subdivision shall be \$40.33, except that if the pension payable to him was less than \$30.25, such amount shall be four-thirds of the amount of the pension or \$16.13, whichever is greater. The term "monthly compensation" shall, for the purposes of this subdivision, mean the monthly compensation used in computing the annuity;

(iii) for an employee who will have been completely insured under paragraph (7)(iii) and either (7)(i) or (7)(ii): the higher of the two amounts computed in accordance with subdivisions (i) or (ii). (Section 5(1)(10) of the act.)

An employee's "average monthly remuneration" shall mean the quotient obtained by

dividing (A) the sum of (1) the compensation paid to him after 1936 and before the employee's closing date, eliminating any excess over \$300 for any calendar month before July 1, 1954, any excess over \$350 for any calendar month after June 30, 1954, and before the calendar month [June 1959] next following the month in which this Act was amended in 1959 [May 1959], and any excess over \$400 for any calendar month after the month in which this Act was so amended, and (ii) if such compensation for any calendar year before 1955 is less than \$3,600 or for any calendar year after 1954 and before 1959 is less than \$4,200, or for any calendar year after 1958 is less than \$4,800, and the average monthly remuneration computed on compensation alone is less than \$400 and the employee has earned in such calendar year "wages" as defined in paragraph (6) hereof, such wages, in an amount not to exceed the difference between the compensation for such year and \$3,600 for years before 1955, \$4,200 for years after 1954 and before 1959, and \$4,800 for years after 1958, by (B) three times the number of quarters elapsing after 1936 and before the employee's closing date: *Provided*, That for the period prior to and including the calendar year in which he will have attained the age of twenty-two there shall be included in the divisor not more than three times the number of quarters of coverage in such period: *Provided, further*, That there shall be excluded from the divisor any calendar quarter which is not a quarter of coverage and during any part of which a retirement annuity will have been payable to him. An employee's "closing date" shall mean (A) the first day of the first calendar year in which such employee both had attained age 65 and was completely insured; or (B) the first day of the calendar year in which such employee died; or (C) the first day of the calendar year following the year in which such employee died, whichever would produce the highest "average monthly remuneration" as defined in the preceding sentence. If the amount of the "average monthly remuneration" as computed under this paragraph is not a multiple of \$1, it shall be rounded to the next lower multiple of \$1.

With respect to an employee who will have been awarded a retirement annuity, the term "compensation" shall, for the purposes of this paragraph, mean the compensation on which such annuity will have been based. (Section 5(1)(9) of the act.)

The term "wages" shall mean wages as defined in section 209 of the Social Security Act. In addition, the term shall include (i) "self-employment income" as defined in section 211(b) of the Social Security Act, and (ii) wages deemed to have been paid under section 217 (a) or (e) of the Social Security Act on account of military service which is not creditable under section 4 of this Act. Wages, as defined in this paragraph, shall be credited for the purposes of this section in the manner and to the extent credited for corresponding purposes of title II of the Social Security Act. (Section 5(1)(6) of the act.)

§ 237.202 Basic amount.

(a) *Payments fixed with relation to basic amount.* The amounts of all insurance annuities and lump sums, other than a residual lump sum, for survivors are fixed with relation to the basic amount of the deceased employee on whose insured status they are conditioned.

(b) *Computation of basic amount.* The manner in which a deceased employee's basic amount is computed depends upon the nature of his insured status.

In the case of completely insured employees, a distinction is made between

those whose completely insured status was based solely on a current connection with the railroad industry and the acquisition of the required numbers of quarters of coverage, and those who were completely insured solely because of having been pensioners or annuitants. The computation is made as follows:

(1) *Employee partially insured or completely insured solely because of current connection and quarters of coverage.* (i) In determining under this part the amount of an insurance annuity for a month after June 1956 and before June 1959 or of a lump sum when the employee died after June 1956 and before June 1959:

(a) If the employee's average monthly remuneration does not exceed \$75, take 44 percent of such average monthly remuneration. If the average monthly remuneration exceeds \$75, take 44 percent of \$75 and add thereto 11 percent of the amount by which the average monthly remuneration exceeds \$75 and does not exceed \$350.

(b) Determine the number of calendar years after 1936 in which \$200 or more of compensation, wages, or both, were paid to the employee. Multiply the number of such years by 1 percent of the amount computed under (a) of this subdivision.

(c) Add the figure computed under (a) of this subdivision and the figure computed under (b) of this subdivision. The sum so obtained is the basic amount. If such sum is less than \$15.40, it is increased to \$15.40.

(ii) In determining under this part the amount of an insurance annuity for a month after May 1959 or of a lump sum when the employee died after May 1959:

(a) If the employee's average monthly remuneration does not exceed \$75, take 49 percent of such average monthly remuneration. If the average monthly remuneration exceeds \$75, take 49 percent of \$75 and add thereto 12 percent of the amount by which the average monthly remuneration exceeds \$75 and does not exceed \$400.

(b) Determine the number of calendar years after 1936 in which \$200 or more of compensation, wages, or both, were paid to the employee. Multiply the number of such years by 1 percent of the amount computed under (a) of this subdivision.

(c) Add the figure computed under (a) of this subdivision and the figure computed under (b) of this subdivision. The sum so obtained is the basic amount. If such sum is less than \$16.95, it is increased to \$16.95.

(2) *Employee completely insured solely because of being a pensioner.* (i) In determining under this part the amount of an insurance annuity for a month after June 1956 and before June 1959 or of a lump sum when the employee died after June 1956 and before June 1959:

(a) If the average monthly earnings on which the pension was computed are ascertainable from the records in the possession of the Board, and if such average monthly earnings do not exceed \$75, take 44 percent of such average

monthly earnings. If such average earnings exceed \$75, take 44 percent of \$75 and add thereto 11 percent of the amount by which the average monthly earnings exceed \$75 and do not exceed \$300. This sum is the basic amount.

(b) If the average monthly earnings on which the pension was computed are not ascertainable from the records in the possession of the Board, and if the pension was \$27.50 or more, the basic amount is \$36.66; but if the pension was less than \$27.50, the basic amount is four-thirds of the amount of the pension which was payable before July 1948, or \$14.66, whichever is greater.

(ii) In determining under this part the amount of an insurance annuity for a month after May 1959 or of a lump sum when the employee died after May 1959:

(a) If the average monthly earnings on which the pension was computed are ascertainable from the records in the possession of the Board, and if such average monthly earnings do not exceed \$75, take 49 percent of such average monthly earnings. If such average monthly earnings exceed \$75, take 49 percent of \$75 and add thereto 12 percent of the amount by which the average monthly earnings exceed \$75 and do not exceed \$300. This sum is the basic amount.

(b) If the average monthly earnings on which the pension was computed are not ascertainable from the records in the possession of the Board, and if the pension was \$30.25 or more, the basic amount is \$40.33; but if the pension was less than \$30.25, the basic amount is four-thirds of the amount of the pension which was payable before July 1948, or \$16.13, whichever is greater.

(3) *Employee completely insured solely because of being an annuitant.* (i) In determining under this part the amount of an insurance annuity for a month after June 1956 and before June 1959 or of a lump sum when the employee died after June 1956 and before June 1959: If the employee's monthly compensation does not exceed \$75, take 44 percent of such monthly compensation. If the monthly compensation exceeds \$75, take 44 percent of \$75 and add thereto 11 percent of the amount by which the monthly compensation exceeds \$75 and does not exceed \$300. This sum is the basic amount. For the purposes of this subdivision, "monthly compensation" means the monthly compensation which was used in computing the employee's annuity.

(ii) In determining under this part the amount of an insurance annuity for a month after May 1959 or of a lump sum when the employee died after May 1959: If the employee's monthly compensation does not exceed \$75, take 49 percent of such monthly compensation. If the monthly compensation exceeds \$75, take 49 percent of \$75 and add thereto 12 percent of the amount by which the monthly compensation exceeds \$75 and does not exceed \$300. This sum is the basic amount. For the purposes of this subdivision, "monthly compensation" means the monthly compensation which was used in computing the employee's annuity.

(4) *Employees completely insured both because of being pensioners or annui-*

tants and also because of current connection and quarters of coverage. (i) In determining under this part the amount of an insurance annuity for a month after June 1956 and before June 1959 or of a lump sum when the employee died after June 1956 and before June 1959: If the employee was a pensioner, compare the amount computed under subparagraph (1) (i) of this paragraph with the amount computed under subparagraph (2) (i) of this paragraph; whichever is greater is the basic amount. If the employee was an annuitant, compare the amount computed under subparagraph (1) (i) of this paragraph with the amount computed under subparagraph (3) (i) of this paragraph; whichever is greater is the basic amount.

(ii) In determining under this part the amount of an insurance annuity for a month after May 1959 or of a lump sum when the employee died after May 1959: If the employee was a pensioner, compare the amount computed under subparagraph (1) (ii) of this paragraph with the amount computed under subparagraph (2) (ii) of this paragraph; whichever is greater is the basic amount. If the employee was an annuitant, compare the amount computed under subparagraph (1) (ii) of this paragraph with the amount computed under subparagraph (3) (ii) of this paragraph; whichever is greater is the basic amount.

§ 237.203 Average monthly remuneration.

A deceased employee's average monthly remuneration is computed by dividing his creditable compensation and wages by three times the number of his divisor quarters.

(a) *Compensation and wages.* (1) All compensation paid to the employee, including compensation attributable to military service, after 1936 and before the employee's closing date, excluding any excess over \$300 for any calendar month before July 1, 1954, any excess over \$350 for any calendar month after June 30, 1954, and before June 1, 1959, and any excess over \$400 for any calendar month after May 31, 1959.

(2) Where the compensation, including compensation attributable to military service, for any calendar year after 1936 and through 1954 and before the employee's closing date is less than \$3,600, wages as defined in section 5(1)(6) of the act in an amount not to exceed the difference between such compensation for the year and \$3,600 shall be included. Where such compensation for any calendar year after 1954 and through 1958 and before the employee's closing date is less than \$4,200, such wages in an amount not to exceed the difference between such compensation for the year and \$4,200 shall be included. Where such compensation for any calendar year after 1958 and before the employee's closing date is less than \$4,800, such wages in an amount not to exceed the difference between such compensation for the year and \$4,800 shall be included.

(b) *Divisor quarters.* Take the number of calendar quarters which have elapsed after 1936 or after the year in which the employee attained age 22, whichever is later, and before the em-

employee's closing date. Add to such elapsed quarters the number of quarters of coverage credited the employee before the year in which he attained age 23. Subtract from the number of quarters thus arrived at the number of such quarters which are not wage quarters of coverage and during any part of which a retirement annuity was payable to the employee. The result is the divisor quarters.

(c) *Rounding.* With respect to annuities awarded on or after September 6, 1958, an average monthly remuneration that is computed under this section and that is not a multiple of \$1, shall be rounded to the next lower multiple of \$1.

§ 237.204 Closing date.

With respect to annuities awarded on or after September 6, 1958, an employee's closing date shall be whichever of the following produces the highest average monthly remuneration as defined in § 237.203:

(a) The first day of the first calendar year in which the employee both had attained age 65 and was completely insured; or

(b) The first day of the calendar year in which the employee died; or

(c) The first day of the calendar year following the year in which the employee died.

(Sec. 10, 50 Stat. 314, 45 U.S.C. 228(j))

Dated: January 15, 1960.

By authority of the Board.

MARY B. LINKINS,
Secretary of the Board.

[F.R. Doc. 60-598; Filed, Jan. 20, 1960;
8:52 a.m.]

Title 26—INTERNAL REVENUE, 1954

Chapter I—Internal Revenue Service, Department of the Treasury

[T.D. 6446]

PART I—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DE- CEMBER 31, 1953

Natural Resources

On November 3, 1956, notice of proposed rule making with respect to regulations for taxable years beginning after December 31, 1953, and ending after August 16, 1954, under sections 611 to 616, inclusive, and section 621 of the Internal Revenue Code of 1954, was published in the *FEDERAL REGISTER* (21 F.R. 8439). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the following regulations are hereby adopted. Section 1.612-4, relating to intangible drilling and development costs, paragraphs (b), (c), and (d) of § 1.613-3, relating to gross income from mining, and §§ 1.614-1 through 1.614-4, relating to the definition of property, continue in effect under notice of proposed rule making and will be given further consideration before final action is taken thereon.

NATURAL RESOURCES

DEDUCTIONS

- Sec. 1.611 Statutory provisions; allowance of deduction for depletion.
- 1.611-1 Allowance of deduction for depletion.
- 1.611-2 Rules applicable to mines, oil and gas wells, and other natural deposits.
- 1.611-3 Rules applicable to timber.
- 1.611-4 Depletion as a factor in computing earnings and profits for dividend purposes.
- 1.611-5 Depreciation of improvements.
- 1.612 Statutory provisions; basis for cost depletion.
- 1.612-1 Basis for allowance of cost depletion.
- 1.612-2 Allowable capital additions in case of mines.
- 1.612-3 Depletion; treatment of bonus and advanced royalty.
- 1.612-4 [Reserved]
- 1.613 Statutory provisions; percentage depletion.
- 1.613-1 Percentage depletion; general rule.
- 1.613-2 Percentage depletion rates.
- 1.613-3 Gross income from the property.
- 1.613-4 Taxable income from the property.
- 1.613-5 Statement to be attached to return when depletion is claimed on percentage basis.
- 1.615 Statutory provisions; exploration expenditures.
- 1.615-1 Exploration expenditures.
- 1.615-2 Deduction of exploration expenditures in the year paid or incurred.
- 1.615-3 Election to defer exploration expenditures.
- 1.615-4 Limitation of amount deductible.
- 1.615-5 Time for making election with respect to returns due on or before the first day of the first month which begins more than 90 days after the regulations are published.
- 1.616 Statutory provisions; development expenditures.
- 1.616-1 Development expenditures.
- 1.616-2 Election to defer.
- 1.616-3 Time for making election with respect to returns due on or before the first day of the first month which begins more than 90 days after the regulations are published.

EXCLUSIONS FROM GROSS INCOME

- 1.621 Statutory provisions; payments to encourage exploration, development, and mining for defense purposes.
- 1.621-1 Payments to encourage exploration, development, and mining for defense purposes.

AUTHORITY: §§ 1.611 to 1.613-5, §§ 1.615 to 1.616-3, and §§ 1.621 to 1.621-1, issued under section 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805.

NATURAL RESOURCES

DEDUCTIONS

§ 1.611 Statutory provisions; allowance of deduction for depletion.

SEC. 611. *Allowance of deduction for depletion—(a) General rule.* In the case of mines, oil and gas wells, other natural deposits, and timber, there shall be allowed as a deduction in computing taxable income a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case; such reasonable allowance in all cases to be made under regulations prescribed by the Secretary or his delegate. For purposes of this part, the term "mines" includes deposits of waste or residue, the extraction of ores or minerals from which is treated as mining

under section 613 (c). In any case in which it is ascertained as a result of operations or of development work that the recoverable units are greater or less than the prior estimate thereof, then such prior estimate (but not the basis for depletion) shall be revised and the allowance under this section for subsequent taxable years shall be based on such revised estimate.

(b) *Special rules—(1) Leases.* In the case of a lease, the deduction under this section shall be equitably apportioned between the lessor and lessee.

(2) *Life tenant and remainderman.* In the case of property held by one person for life with remainder to another person, the deduction under this section shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant.

(3) *Property held in trust.* In the case of property held in trust, the deduction under this section shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each.

(4) *Property held by estate.* In the case of an estate, the deduction under this section shall be apportioned between the estate and the heirs, legatees, and devisees on the basis of the income of the estate allocable to each.

(c) *Gross reference.* For other rules applicable to depreciation of improvements, see section 167.

§ 1.611-1 Allowance of deduction for depletion.

(a) *Depletion of mines, oil and gas wells, other natural deposits, and timber—(1) In general.* Section 611 provides that there shall be allowed as a deduction in computing taxable income in the case of mines, oil and gas wells, other natural deposits, and timber, a reasonable allowance for depletion. In the case of standing timber, the depletion allowance shall be computed solely upon the adjusted basis of the property. In the case of other exhaustible natural resources the allowance for depletion shall be computed upon either the adjusted depletion basis of the property (see section 612, relating to cost depletion) or upon a percentage of gross income from the property (see section 613, relating to percentage depletion), whichever results in the greater allowance for depletion for any taxable year. In no case will depletion based upon discovery value be allowed.

(2) See § 1.611-5 for methods of depreciation relating to improvements connected with mineral or timber properties.

(3) See paragraph (d) of this section for definition of terms.

(b) *Economic interest.* (1) Annual depletion deductions are allowed only to the owner of an economic interest in mineral deposits or standing timber. An economic interest is possessed in every case in which the taxpayer has acquired by investment any interest in mineral in place or standing timber and secures, by any form of legal relationship, income derived from the extraction of the mineral or severance of the timber, to which he must look for a return of his capital. But a person who has no capital investment in the mineral deposit or standing timber does not possess an economic interest merely because through a contractual relation he possess a mere

economic or pecuniary advantage derived from production. For example, an agreement between the owner of an economic interest and another entitling the latter to purchase or process the product upon production or entitling the latter to compensation for extraction or cutting does not convey a depletable economic interest. Further, depletion deductions with respect to an economic interest of a corporation are allowed to the corporation and not to its shareholders.

(2) No depletion deduction shall be allowed the owner with respect to any timber or coal that such owner has disposed of under any form of contract by virtue of which he retains an economic interest in such timber or coal, if such disposal is considered a sale of timber or coal under section 631 (b) or (c).

(c) *Special rules*—(1) *In general.* For the purpose of the equitable apportionment of depletion among the several owners of economic interests in a mineral deposit or standing timber, if the value of any mineral or timber must be ascertained as of any specific date for the determination of the basis for depletion, the values of such several interests therein may be determined separately, but, when determined as of the same date, shall together never exceed the value at that date of the mineral or timber as a whole.

(2) *Leases.* In the case of a lease, the deduction for depletion under section 611 shall be equitably apportioned between the lessor and lessee. In the case of a lease or other contract providing for the sharing of economic interests in a mineral deposit or standing timber, such deduction shall be computed by each taxpayer by reference to the adjusted basis of his property determined in accordance with sections 611 and 612, or computed in accordance with section 613, if applicable, and the regulations thereunder.

(3) *Life tenant and remainderman.* In the case of property held by one person for life with remainder to another person, the deduction for depletion under section 611 shall be computed as if the life tenant were the absolute owner of the property so that he will be entitled to the deduction during his life, and thereafter the deduction, if any, shall be allowed to the remainderman.

(4) *Mineral or timber property held in trust.* If a mineral property or timber property is held in trust, the allowable deduction for depletion is to be apportioned between the income beneficiaries and the trustee on the basis of the trust income from such property allocable to each, unless the governing instrument (or local law) requires or permits the trustee to maintain a reserve for depletion in any amount. In the latter case, the deduction is first allocated to the trustee to the extent that income is set aside for a depletion reserve, and any part of the deduction in excess of the income set aside for the reserve shall be apportioned between the income beneficiaries and the trustee on the basis of the trust income (in excess of the income set aside for the reserve) allocable to each. For example:

(i) If under the trust instrument or local law the income of a trust computed

without regard to depletion is to be distributed to a named beneficiary, the beneficiary is entitled to the deduction to the exclusion of the trustee.

(ii) If under the trust instrument or local law the income of a trust is to be distributed to a named beneficiary, but the trustee is directed to maintain a reserve for depletion in any amount, the deduction is allowed to the trustee (except to the extent that income set aside for the reserve is less than the allowable deduction). The same result would follow if the trustee sets aside income for a depletion reserve pursuant to discretionary authority to do so in the governing instrument.

No effect shall be given to any allocation of the depletion deduction which gives any beneficiary or the trustee a share of such deduction greater than his pro rata share of the trust income, irrespective of any provisions in the trust instrument, except as otherwise provided in this paragraph when the trust instrument or local law requires or permits the trustee to maintain a reserve for depletion.

(5) *Mineral or timber property held by estate.* In the case of a mineral property or timber property held by an estate, the deduction for depletion under section 611 shall be apportioned between the estate and the heirs, legatees, and devisees on the basis of income of the estate from such property which is allocable to each.

(d) *Definitions.* As used in this part, and the regulations thereunder, the term—

(1) "Property" means—(i) in the case of minerals, each separate economic interest owned in each mineral deposit in each separate tract or parcel of land or an aggregation or combination of such mineral interests permitted under section 614 (b), (c), (d), or (e); and (ii) in the case of timber, an economic interest in standing timber in each tract or block representing a separate timber account (see paragraph (d) of § 1.611-3). For rules with respect to waste or residue of prior mining, see paragraph (c) of § 1.614-1. When, in the regulations under this part, either the word "mineral" or "timber" precedes the word "property", such adjectives are used only to classify the type of "property" involved. For further explanation of the term "property", see section 614 and the regulations thereunder.

(2) "Fair market value" of a property is that amount which would induce a willing seller to sell and a willing buyer to purchase.

(3) "Mineral enterprise" is the mineral deposit or deposits and improvements, if any, used in mining or in the production of oil and gas, and only so much of the surface of the land as is necessary for purposes of mineral extraction. The value of the mineral enterprise is the combined value of its component parts.

(4) "Mineral deposit" refers to minerals in place. When a mineral enterprise is as a unit acquired, the cost of any interest in the mineral deposit or deposits is that proportion of the total cost of the mineral enterprise which the

value of the interest in the deposit or deposits bears to the value of the entire enterprise at the time of its acquisition.

(5) "Minerals" includes ores of the metals, coal, oil, gas, and all other natural metallic and nonmetallic deposits, except minerals derived from sea water, the air, or from similar inexhaustible sources. It includes but is not limited to all of the minerals and other natural deposits subject to depletion based upon a percentage of gross income from the property under section 613 and the regulations thereunder.

§ 1.611-2 Rules applicable to mines, oil and gas wells, and other natural deposits.

(a) *Computation of cost depletion of mines, oil and gas wells, and other natural deposits.* (1) The basis upon which cost depletion is to be allowed in respect of any mineral property is the basis provided for in section 612 and the regulations thereunder. After the amount of such basis applicable to the mineral property has been determined for the taxable year, the cost depletion for that year shall be computed by dividing such amount by the number of units of mineral remaining as of the taxable year (see subparagraph (3) of this paragraph), and by multiplying the depletion unit, so determined, by the number of units of mineral sold within the taxable year (see subparagraph (2) of this paragraph). In the selection of a unit of mineral for depletion, preference shall be given to the principal or customary unit or units paid for in the products sold, such as tons of ore, barrels of oil, or thousands of cubic feet of natural gas.

(2) As used in this paragraph, the phrase "number of units sold within the taxable year"—

(i) In the case of a taxpayer reporting income on the cash receipts and disbursements method, includes units for which payments were received within the taxable year although produced or sold prior to the taxable year, and excludes units sold but not paid for in the taxable year, and

(ii) In the case of a taxpayer reporting income on the accrual method, shall be determined from the taxpayer's inventories kept in physical quantities and in a manner consistent with his method of inventory accounting under section 471 or 472.

The phrase does not include units with respect to which depletion deductions were allowed or allowable prior to the taxable year.

(3) "The number of units of mineral remaining as of the taxable year" is the number of units of mineral remaining at the end of the year to be recovered from the property (including units recovered but not sold) plus the "number of units sold within the taxable year" as defined in this section.

(4) In the case of a natural gas well where the annual production is not metered and is not capable of being estimated with reasonable accuracy, the taxpayer may compute the cost depletion allowance in respect of such property for the taxable year by multiplying the ad-

justed basis of the property by a fraction, the numerator of which is equal to the decline in rock pressure during the taxable year and the denominator of which is equal to the expected total decline in rock pressure from the beginning of the taxable year to the economic limit of production. Taxpayers computing depletion by this method must keep accurate records of periodical pressure determinations.

(5) If an aggregation of two or more separate mineral properties is made during a taxable year under section 614, cost depletion for each such property shall be computed separately for that portion of the taxable year ending immediately before the effective date of the aggregation. Cost depletion with respect to the aggregated property shall be computed for that portion of the taxable year beginning on such effective date. The allowance for cost depletion for the taxable year shall be the sum of such cost depletion computations. For purposes of this paragraph, each such portion of the taxable year shall be considered as a taxable year. Similar rules shall be applied where a separate mineral property is properly removed from an existing aggregation during a taxable year. See section 614 and the regulations thereunder for rules relating to the effective date of an aggregation of mineral interests and for rules relating to the adjusted basis of an aggregation.

(6) The apportionment of the deduction among the several owners of economic interests in the mineral deposit or deposits will be made as provided in paragraph (c) of § 1.611-1.

(b) *Depletion accounts of mineral property.* (1) Every taxpayer claiming and making a deduction for depletion of mineral property shall keep a separate account in which shall be accurately recorded the cost or other basis provided by section 1012, of such property together with subsequent allowable capital additions to each account and all the other adjustments required by section 1016.

(2) Mineral property accounts shall thereafter be credited annually with the amounts of the depletion computed in accordance with section 611 or 613 and the regulations thereunder; or the amounts of the depletion so computed shall be credited to depletion reserve accounts. No further deductions for cost depletion shall be allowed when the sum of the credits for depletion equals the cost or other basis of the property, plus allowable capital additions. However, depletion deductions may be allowable thereafter computed upon a percentage of gross income from the property. See section 613 and the regulations thereunder. In no event shall percentage depletion in excess of cost or other basis of the property be credited to the improvements account or the depreciation reserve account.

(c) *Determination of mineral contents of deposits.* (1) If it is necessary to estimate or determine with respect to any mineral deposit as of any specific date the total recoverable units (tons, pounds, ounces, barrels, thousands of cubic feet, or other measure) of mineral products reasonably known, or on good evidence

believed, to have existed in place as of that date, the estimate or determination must be made according to the method current in the industry and in the light of the most accurate and reliable information obtainable. In the selection of a unit of estimate, preference shall be given to the principal unit (or units) paid for in the product marketed. The estimate of the recoverable units of the mineral products in the deposit for the purposes of valuation and depletion shall include as to both quantity and grade:

(i) The ores and minerals "in sight", "blocked out", "developed", or "assured", in the usual or conventional meaning of these terms with respect to the type of the deposits, and

(ii) "Probable" or "prospective" ores or minerals (in the corresponding sense), that is, ores or minerals that are believed to exist on the basis of good evidence although not actually known to occur on the basis of existing development. Such "probable" or "prospective" ores or minerals may be estimated:

(a) As to quantity, only in case they are extensions of known deposits or are new bodies or masses whose existence is indicated by geological surveys or other evidence to a high degree of probability, and

(b) As to grade, only in accordance with the best indications available as to richness.

(2) If the number of recoverable units of mineral in the deposit has been previously estimated for the prior year or years, and if there has been no known change in the facts upon which the prior estimate was based, the number of recoverable units of mineral in the deposit as of the taxable year will be the number remaining from the prior estimate. However, for any taxable year for which it is ascertained either by the taxpayer or the district director from any source such as operations or development work prior to the close of the taxable year that the remaining recoverable mineral units as of the taxable year are materially greater or less than the number remaining from the prior estimate, then the estimate of the remaining recoverable units shall be revised, and the annual cost depletion allowance with respect to the property for the taxable year and for subsequent taxable years will be based upon the revised estimate until a change in the facts requires another revision. Such revised estimate will not, however, change the adjusted basis for depletion.

(d) *Determination of fair market value of mineral properties, and improvements, if any.* (1) If the fair market value of the mineral property and improvements at a specified date is to be determined for the purpose of ascertaining the basis, such value must be determined, subject to approval or revision by the district director, by the owner of such property and improvements in the light of the conditions and circumstances known at that date, regardless of later discoveries or developments or subsequent improvements in methods of extraction and treatment of the mineral product. The district director will give due weight and consideration to any and all factors and evidence having a bearing

on the market value, such as cost, actual sales and transfers of similar properties and improvements, bona fide offers, market value of stock or shares, royalties and rentals, valuation for local or State taxation, partnership accountings, records of litigation in which the value of the property and improvements was in question, the amount at which the property and improvements may have been inventoried or appraised in probate or similar proceedings, and disinterested appraisals by approved methods.

(2) If the fair market value must be ascertained as of a certain date, analytical appraisal methods of valuation, such as the present value method will not be used:

(i) If the value of a mineral property and improvements, if any, can be determined upon the basis of cost or comparative values and replacement value of equipment, or

(ii) If the fair market value can reasonably be determined by any other method.

(e) *Determination of the fair market value of mineral property by the present value method.* (1) To determine the fair market value of a mineral property and improvements by the present value method, the essential factors must be determined for each mineral deposit. The essential factors in determining the fair market value of mineral deposits are:

(i) The total quantity of mineral in terms of the principal or customary unit (or units) paid for in the product marketed,

(ii) The quantity of mineral expected to be recovered during each operating period,

(iii) The average quality or grade of the mineral reserves,

(iv) The allocation of the total expected profit to the several processes or operations necessary for the preparation of the mineral for market,

(v) The probable operating life of the deposit in years,

(vi) The development cost,

(vii) The operating cost,

(viii) The total expected profit,

(ix) The rate at which this profit will be obtained, and

(x) The rate of interest commensurate with the risk for the particular deposit.

(2) If the mineral deposit has been sufficiently developed, the valuation factors specified in subparagraph (1) of this paragraph may be determined from past operating experience. In the application of factors derived from past experience, full allowance should be made for probable future variations in the rate of exhaustion, quality or grade of the mineral, percentage of recovery, cost of development, production, interest rate, and selling price of the product marketed during the expected operating life of the mineral deposit. Mineral deposits for which these factors cannot be determined with reasonable accuracy from past operating experience may also be valued by the present value method; but the factors must be deduced from concurrent evidence, such as the general type of the deposit, the characteristics of the district in which it occurs, the habit of the mineral deposits, the intensity of mineraliza-

tion, the oil-gas ration, the rate at which additional mineral has been disclosed by exploitation, the stage of the operating life of the deposit, and any other evidence tending to establish a reasonable estimate of the required factors.

(3) Mineral deposits of different grades, locations, and probable dates of extraction should be valued separately. The mineral content of a deposit shall be determined in accordance with paragraph (c) of this section. In estimating the average grade of the developed and prospective mineral, account should be taken of probable increases or decreases as indicated by the operating history. The rate of exhaustion of a mineral deposit should be determined with due regard to the limitations imposed by plant capacity, by the character of the deposit, by the ability to market the mineral product, by labor conditions, and by the operating program in force or reasonably to be expected for future operations. The operating life of a mineral deposit is that number of years necessary for the exhaustion of both the developed and prospective mineral content at the rate determined as above. The operating life of oil and gas wells is also influenced by the natural decline in pressure and flow, and by voluntary or enforced curtailment of production. The operating cost includes all current expense of producing, preparing, and marketing the mineral product sold (due consideration being given to taxes) exclusive of allowable capital additions, as described in §§ 1.612-2 and 1.612-4, and deductions for depreciation and depletion, but including cost of repairs. This cost of repairs is not to be confused with the depreciation deduction by which the cost of improvements is returned to the taxpayer free from tax. In general, no estimates of these factors will be approved by the district director which are not supported by the operating experience of the property or which are derived from different and arbitrarily selected periods.

(4) The value of each mineral deposit is measured by the expected gross income (the number of units of mineral recoverable in marketable form multiplied by the estimated market price per unit) less the estimated operating cost, reduced to a present value as of the date for which the valuation is made at the rate of interest commensurate with the risk for the operating life, and further reduced by the value at that date of the improvements and of the capital additions, if any, necessary to realize the profits. The degree of risk is generally lowest in cases where the factors of valuation are fully supported by the operating record of the mineral enterprise before the date for which the valuation is made. On the other hand, higher risks ordinarily attach to appraisals upon any other basis.

(f) *Revaluation of mineral property not allowed.* No revaluation of a mineral property whose value as of any specific date has been determined and approved will be made or allowed during the continuance of the ownership under which the value was so determined and approved, except in the case of misrepresentation or fraud or gross error as to any facts known on the date as of

which the valuation was made. Revaluation on account of misrepresentation or fraud or such gross error will be made only with the written approval of the Commissioner.

(g) *Statement to be attached to return when valuation, depletion, or depreciation of mineral property or improvements are claimed.* (1) For the first taxable year for which a taxpayer asserts a value for any mineral property or improvement as of a specific date or claims a deduction for depletion, or depreciation, there shall be attached to the return of the taxpayer for such taxable year a statement setting forth, in complete, summary form, the pertinent information required by this paragraph with respect to each such mineral property or improvement (including oil and gas properties or improvements). The summary statement shall be deemed a part of the income tax return to which it relates. In addition to such summary statement, the taxpayer must assemble, segregate and have readily available at his principal place of business, all the supporting data (listed in subparagraphs (2), (3), and (4) of this paragraph) which is used in compiling the summary statement. After such first taxable year the taxpayer need attach to his return only an explanation of the changes, if any, in the information previously furnished. For example, when a taxpayer has filed adequate maps with the district director he may be relieved of filing further maps of the same area, if all additional information necessary for keeping the maps up-to-date is filed each year. In any case in which any of the information required by this paragraph has been previously filed by the taxpayer (including information furnished in accordance with corresponding provisions of prior regulations), such information need not be filed again but a statement should be attached to the return of the taxpayer indicating clearly when and in what form such information was previously filed.

(2) The information referred to in subparagraph (1) of this paragraph is as follows:

(i) An adequate map showing the name, description, location, date of surveys, and identification of the deposit or deposits;

(ii) A description of the character of the taxpayer's property, accompanied by a copy of the instrument or instruments by which it was acquired;

(iii) The date of acquisition of the property, the exact terms and dates of expiration of all leases involved, and if terminated, the reasons therefor;

(iv) The cost of the mineral property and improvements, stating the amount paid to each vendor, with his name and address;

(v) The date as of which the mineral property and improvements are valued, if a valuation is necessary to establish the basis as provided by section 1012;

(vi) The value of the mineral property and improvements on that date with a statement of the precise method by which it was determined;

(vii) An allocation of the cost or value among the mineral property, improve-

ments and the surface of the land for purposes other than mineral production;

(viii) The estimated number of units of each kind of mineral at the end of the taxable year, and also at the date of acquisition, if acquired during the taxable year or at the date as of which any valuation is made, together with an explanation of the method used in the estimation, the name and address of the person making the estimate, and an average analysis which will indicate the quality of the mineral valued, including the grade or gravity in the case of oil;

(ix) The number of units sold and the number of units for which payment was received or accrued during the year for which the return is made (in the case of newly developed oil and gas deposits it is desirable that this information be furnished by months);

(x) The gross amount received from the sale of mineral;

(xi) The amount of depreciation for the taxable year and the amount of cost depletion for the taxable year;

(xii) The amounts of depletion and depreciation, if any, stated separately, which for each and every prior year:

(a) Were allowed (see section 1016 (a) (2));

(b) Were allowable, and

(c) Would have been allowable without reference to percentage or discovery depletion;

(xiii) The fractions (however measured) of gross production from the deposit or deposits to which the taxpayer and other persons are entitled together with the names and addresses of such other persons; and

(xiv) Any other data which will be helpful in determining the reasonableness of the valuation asserted or of the deductions claimed.

(3) In the case of oil and gas properties, the following information with respect to each property is required in addition to that information set forth in subparagraph (2) of this paragraph:

(i) The number of acres of producing oil or gas land and, if additional acreage is claimed to be proven, the amount of such acreage and the reasons for believing it to be proven;

(ii) The number of wells producing at the beginning and end of the taxable year;

(iii) The date of completion of each well finished during the taxable year;

(iv) The date of abandonment of each well abandoned during the taxable year;

(v) Maps showing the location of the tracts or leases and of the producing and abandoned wells, dry holes, and proven oil and gas lands (the maps should show depth, initial production, and date of completion of each well, etc., to the extent that these data are available);

(vi) The number of pay sands and average thickness of each pay sand or zone;

(vii) The average depth to the top of each of the different pay sands;

(viii) The annual production of the deposit or of the individual wells, if the latter information is available, from the beginning of its productivity to the end of the taxable year, the average number of wells producing during each year, and the initial daily production of each well

(the extent to which oil or gas is used for fuel on the premises should be stated with reasonable accuracy);

(ix) All available data regarding change in operating conditions, such as unit operation, proration, flooding, use of air-gas lift, vacuum, shooting, and similar information, which have a direct effect on the production of the deposit; and

(x) Available geological information having a probable bearing on the oil and gas content; information with respect to edge water, water drive, bottom hold pressures, oil-gas ratio, porosity of reservoir rock, percentage of recovery, expected date of cessation of natural flow, decline in estimated potential, and characteristics similar to characteristics of other known fields.

(4) For rules relating to an additional statement to be attached to the return when the depletion deduction is computed upon a percentage of gross income from the property, see § 1.613-5.

§ 1.611-3 Rules applicable to timber.

(a) *Capital recoverable through depletion allowance in case of timber.* In general, the capital remaining in any year recoverable through depletion allowances is the basis provided by section 612 and the regulations thereunder. For the method of determining fair market value and quantity of timber, see paragraphs (d), (e), and (f) of this section. For capitalization of carrying charges, see section 1016(a)(1)(A). Amounts paid or incurred in connection with the planting of timber (including planting for Christmas tree purposes) shall be capitalized and recoverable through depletion allowances. Such amounts include, for example, expenditures made for the preparation of the timber site for planting or for natural seeding and the cost of seedlings. The apportionment of deductions between the several owners of economic interests in standing timber will be made as provided in paragraph (c) of § 1.611-1.

(b) *Computation of allowance for depletion of timber for taxable year.* (1) The depletion of timber takes place at the time timber is cut, but the amount of depletion allowable with respect to timber that has been cut may be computed when the quantity of cut timber is first accurately measured in the process of exploitation. To the extent that depletion is allowable in a particular taxable year with respect to timber the products of which are not sold during such year, the depletion so allowable shall be included as an item of cost in the closing inventory of such products for such year.

(2) The depletion unit of the timber for a given timber account in a given year shall be the quotient obtained by dividing (i) the basis provided by section 1012 and adjusted as provided by section 1016, of the timber on hand at the beginning of the year plus the cost of the number of units of timber acquired during the year plus proper additions to capital, by (ii) the total number of units of timber on hand in the given account at the beginning of the year plus the number of units acquired during the year plus (or minus) the number of units

required to be added (or deducted) by way of correcting the estimate of the number of units remaining available in the account. The number of units of timber of a given timber account cut during any taxable year multiplied by the depletion unit of that timber account applicable to such year shall be the amount of depletion allowable for the taxable year. Those taxpayers who keep their accounts on a monthly basis may, at their option, keep their depletion accounts on such basis, in which case the amount allowable on account of depletion for a given month will be determined in the manner outlined herein for a given year. The total amount of the allowance for depletion in any taxable year shall be the sum of the amounts allowable for the several timber accounts. For a description of timber accounts, see paragraphs (c) and (d) of this section.

(3) When a taxpayer has elected to treat the cutting of timber as a sale or exchange of such timber under the provisions of section 631(a), he shall reduce the timber account containing such timber by an amount equal to the adjusted depletion basis of such timber. In computing any further gain or loss on such timber, see paragraph (e) of § 1.631-1.

(c) *Timber depletion accounts on books.* (1) Every taxpayer claiming or expecting to claim a deduction for depletion of timber property shall keep accurate ledger accounts in which shall be recorded the cost or other basis provided by section 1012 of the property and land together with subsequent allowable capital additions in each account and all other adjustments provided by section 1016 and the regulations thereunder.

(2) In such accounts there shall be set up separately the quantity of timber, the quantity of land, and the quantity of other resources, if any, and a proper part of the total cost or value shall be allocated to each after proper provision for immature timber growth. See paragraph (d) of this section. The timber accounts shall be credited each year with the amount of the charges to the depletion accounts computed in accordance with paragraph (b) of this section or the amount of the charges to the depletion accounts shall be credited to depletion reserve accounts. When the sum of the credits for depletion equals the cost or other basis of the timber property, plus subsequent allowable capital additions, no further deduction for depletion will be allowed.

(d) *Aggregating timber and land for purposes of valuation and accounting.*

(1) With a view to logical and reasonable valuation of timber, the taxpayer shall include his timber in one or more accounts. In general, each such account shall include all of the taxpayer's timber which is located in one "block". A block may be an operation unit which includes all the taxpayer's timber which would logically go to a single given point of manufacture. In those cases in which the point of manufacture is at a considerable distance, or in which the logs or other products will probably be sold in a log or other market, the block may be a logging unit which includes all of

the taxpayer's timber which would logically be removed by a single logging development. Blocks may also be established by geographical or political boundaries or by logical management areas. Timber acquired under cutting contracts should be carried in separate accounts and shall not constitute part of any block. In exceptional cases, provided there are good and substantial reasons, and subject to approval or revision by the district director on audit, the taxpayer may divide the timber in a given block into two or more accounts. For example, timber owned on February 23, 1913, and that purchased subsequently may be kept in separate accounts, or timber owned on February 28, 1913, and the timber purchased since that date in several distinct transactions may be kept in several distinct accounts. Individual tree species or groups of tree species may be carried in distinct accounts, or special timber products may be carried in distinct accounts. Blocks may be divided into two or more accounts based on the character of the timber or its accessibility, or scattered tracts may be included in separate accounts. If such a division is made, a proper portion of the total value or cost, as the case may be, shall be allocated to each account.

(2) The timber accounts mentioned in subparagraph (1) of this paragraph shall not include any part of the value or cost, as the case may be, of the land. In a manner similar to that prescribed in subparagraph (1) of this paragraph, the land in a given "block" may be carried in a single land account or may be divided into two or more accounts on the basis of its character or accessibility. When such a division is made, a proper portion of the total value or cost, as the case may be, shall be allocated to each account.

(3) The total value or total cost, as the case may be, of land and timber shall be equitably allocated to the timber and land accounts, respectively. In cases in which immature timber growth is a factor, a reasonable portion of the total value or cost shall be allocated to such immature timber, and when the timber becomes merchantable such value or cost shall be recoverable through depletion allowances.

(4) Each of the several land and timber accounts carried on the books of the taxpayer shall be definitely described as to their location on the ground either by maps or by legal descriptions.

(5) For good and substantial reasons satisfactory to the district director, or as required by the district director on audit, the timber or the land accounts may be readjusted by dividing individual accounts, by combining two or more accounts, or by dividing and recombining accounts.

(e) *Determination of quantity of timber.* Each taxpayer claiming or expecting to claim a deduction for depletion is required to estimate with respect to each separate timber account the total units (feet board measure, log scale, cords, or other units) of timber reasonably known, or on good evidence believed, to have existed on the ground on March 1, 1913, or on the date of acquisition of

the property, whichever date is applicable in determining the basis for cost depletion. This estimate shall state as nearly as possible the number of units which would have been found present by careful estimate made on the specified date with the object of determining 100 percent of the quantity of timber which the area covered by the specific account would have produced on that date if all of the merchantable timber had been cut and utilized in accordance with the standards of utilization prevailing in that region at that time. If subsequently during the ownership of the taxpayer making the return, as the result of the growth of the timber, of changes in standards of utilization, of losses not otherwise accounted for, of abandonment of timber, or of operations or development work, it is ascertained either by the taxpayer or the district director that there remain on the ground, available for utilization, more or less units of timber at the close of the taxable year (or at the close of the month if the taxpayer keeps his depletion accounts on a monthly basis) than remain in the timber account or accounts on the basis of the original estimate, then the original estimate (but not the basis for depletion) shall be revised. The depletion unit shall be changed when such revision has been made. The annual charge to the depletion account with respect to the property shall be computed by using such revised unit for the taxable year for which the revision is made and all subsequent taxable years until a change in facts requires another revision.

(f) *Determination of fair market value of timber property.* (1) If the fair market value of the property at a specified date is the basis for depletion deductions, such value shall be determined, subject to approval or revision by the district director upon audit, by the owner of the property in the light of the most reliable and accurate information available with reference to the condition of the property as it existed at that date, regardless of all subsequent changes, such as changes in surrounding circumstances, and methods of exploitation, in degree of utilization, etc. Such factors as the following will be given due consideration:

(i) Character and quality of the timber as determined by species, age, size, condition, etc.;

(ii) The quantity of timber per acre, the total quantity under consideration, and the location of the timber in question with reference to other timber;

(iii) Accessibility of the timber (location with reference to distance from a common carrier, the topography and other features of the ground upon which the timber stands and over which it must be transported in process of exploitation, the probable cost of exploitation and the climate and the state of industrial development of the locality); and

(iv) The freight rates by common carrier to important markets.

(2) The timber in each particular case will be valued on its own merits and not on the basis of general averages for regions; however, the value placed upon it, taking into consideration such factors

as those mentioned above, will be consistent with that of other similar timber in the region. The district director will give weight and consideration to any and all facts and evidence having a bearing on the market value, such as cost, actual sales and transfers of similar properties, the margin between the cost of production and the price realized for timber products, market value of stock or shares, royalties and rentals, valuation for local or State taxation, partnership accountings, records of litigation in which the value of the property has been involved, the amount at which the property may have been inventoried or appraised in probate or similar proceedings, disinterested appraisals by approved methods, and other factors.

(g) *Revaluation of timber property not allowed.* No revaluation of a timber property whose value as of any specific date has been determined and approved will be made or allowed during the continuance of the ownership under which the value was so determined and approved, except in the case of misrepresentation or fraud or gross error as to any facts known on the date as of which the valuation was made. Revaluation on account of misrepresentation or fraud or such gross error will be made only with the written approval of the Commissioner. The depletion unit shall be revised when such a revaluation of a timber property has been made and the annual charge to the depletion account with respect to the property shall be computed by using such revised unit for the taxable year for which such revision is made and for all subsequent taxable years.

(h) *Information to be furnished by taxpayer claiming depletion of timber.* A taxpayer claiming a deduction for depletion of timber and for depreciation of plant and other improvements shall attach to his income tax return a filled-out Form T-Timber for the taxable year covered by the income tax return, including the following information:

(1) A map where necessary, to show clearly timber and land acquired, timber cut, and timber and land sold;

(2) Description of, cost of, and terms of purchase of timberland or timber, or cutting rights, including timber or timber rights acquired under any type of contract;

(3) Profit or loss from sale of land, or timber, or both;

(4) Description of timber with respect to which claim for loss, if any, is made;

(5) Record of timber cut;

(6) Changes in each timber account as a result of purchase, sale, cutting, re-estimate, or loss;

(7) Changes in improvements accounts as the result of additions to or deductions from capital and depreciation, and computation of profit or loss on sale or other disposition of such improvements;

(8) Operation data with respect to raw and finished material handled and inventoried;

(9) Statement as to application of the election under section 631 (a) and pertinent information in support of the fair market value claimed thereunder;

(10) Information with respect to land ownership and capital investment in timberland; and

(11) Any other data which will be helpful in determining the reasonableness of the depletion or depreciation deductions claimed in the return.

§ 1.611-4 Depletion as a factor in computing earnings and profits for dividend purposes.

For rules with respect to computation of earnings and profits where depletion is a factor in the case of corporations, see paragraph (c) (1) of § 1.312-6.

§ 1.611-5 Depreciation of improvements.

(a) *In general.* Section 611 provides in the case of mines, oil and gas wells, other natural deposits, and timber that there shall be allowed as a deduction a reasonable allowance for depreciation of improvements. Such allowance, shall include exhaustion, wear and tear, and obsolescence. The deduction allowed under section 611 shall be determined under the provisions of section 167 and the regulations thereunder. For purposes of section 167 the unit of production method may, under appropriate circumstances, be considered a reasonable method under section 167(a), and therefore, not subject to the limitations prescribed by section 167(b).

(b) *Special rules for mines, oil and gas wells, other natural deposits and timber.* (1) For principles governing the apportioning of depreciation allowances under sections 611 and 167 in the case of property held by one person for life with remainder to another or in the case of property held in trust or by an estate, see § 1.167(g)-1.

(2) A reasonable allowance for depreciation on account of obsolescence or decay shall be required in an appropriate case during periods when the improvement is not used in production or is used in producing at a rate below its normal capacity. This rule is applicable whether or not the taxpayer uses the unit of production method.

(3) See sections 615 and 616 and the regulations thereunder for special rules for treatment of allowances for depreciation of improvements with respect to the exploration and development of a mine or other natural deposit (other than oil or gas).

(4) In the case of operating oil or gas properties, the deduction for depreciation shall be allowed for those costs of improvements such as machinery, tools, equipment, pipes and other similar items and the costs of installation which are not treated as a deductible expense under section 263(c). See § 1.612-4.

(c) *Accounting and record keeping.* See § 1.167(a)-7 for accounting and record keeping requirements for taxpayers claiming deductions under section 611 and this section.

§ 1.612 Statutory provisions; basis for cost depletion.

SEC. 612. *Basis for cost depletion.* Except as otherwise provided in this subchapter, the basis on which depletion is to be allowed in respect of any property shall be the adjusted basis provided in section 1011 for the purpose

of determining the gain upon the sale or other disposition of such property.

§ 1.612-1 Basis for allowance of cost depletion.

(a) *In general.* The basis upon which the deduction for cost depletion under section 611 is to be allowed in respect of any mineral or timber property is the adjusted basis provided in section 1011 for the purpose of determining gain upon the sale or other disposition of such property except as provided in paragraph (b) of this section. The adjusted basis of such property is the cost or other basis determined under section 1012, relating to the basis of property, adjusted as provided in section 1016, relating to adjustments to basis, and the regulations under such sections. In the case of the sale of a part of such property, the unrecovered basis thereof shall be allocated to the part sold and the part retained.

(b) *Special rules.* (1) The basis for cost depletion of mineral or timber property does not include:

(i) Amounts recoverable through depreciation deductions, through deferred expenses, and through deductions other than depletion, and

(ii) The residual value of land and improvements at the end of operations.

In the case of any mineral property the basis for cost depletion does not include amounts representing the cost or value of land for purposes other than mineral productions. Furthermore, in the case of certain mineral properties, such basis does not include exploration or development expenditures which are treated under section 615(b) or 616(b) as deferred expenses to be taken into account as deductions on a ratable basis as the units of minerals benefited thereby are produced and sold. However, there shall be included in the basis for cost depletion of oil and gas property the amounts of capitalized drilling and development costs which, as provided in § 1.612-4, are recoverable through depletion deductions. In the case of timber property, the basis for cost depletion does not include amounts representing the cost or value of land.

(2) Where a taxpayer elects to treat the cutting of timber as a sale or exchange of such timber, the basis for cost depletion shall be the fair market value of such timber as of the first day of the taxable year in which such timber is cut and such value shall be considered for such taxable year and all subsequent taxable years as the cost of such timber for all purposes for which such cost is a necessary factor. See section 631(a).

(c) *Cross references.* In cases where the valuation, revaluation, or mineral content of deposits is a factor, see paragraphs (c), (d), (e), and (f) of § 1.611-2. In cases where the valuation, revaluation, or quantity of timber is a factor, see paragraphs (e), (f), and (g) of § 1.611-3. For definitions of the terms "property", "fair market value", "mineral enterprise", "mineral deposit", and "minerals", see paragraph (d) of § 1.611-1. For rules with respect to treatment of depletion accounts on taxpayers' books, see paragraph (b) of

§ 1.611-2 in the case of mineral property, and paragraph (c) of § 1.611-3 in the case of timber property.

§ 1.612-2 Allowable capital additions in case of mines.

(a) *In general.* Expenditures for improvements and for replacements, not including expenditures for ordinary and necessary maintenance and repairs, shall ordinarily be charged to capital account recoverable through depreciation deductions. Expenditures for equipment (including its installation and housing) and for replacements thereof, which are necessary to maintain the normal output solely because of the recession of the working faces of the mine and which—

(1) Do not increase the value of the mine, or

(2) Do not decrease the cost of production of mineral units, or

(3) Do not represent an amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made shall be deducted as ordinary and necessary business expenses.

(b) *Special rule.* For special provisions applicable to treatment of expenditures for certain exploration and development costs (other than for the acquisition, restoration, or betterment of improvements) with respect to minerals other than oil or gas, see sections 615 and 616 and the regulations thereunder.

§ 1.612-3 Depletion; treatment of bonus and advanced royalty.

(a) *Bonus.* (1) If a bonus in addition to royalties is received upon the grant of an economic interest in a mineral deposit, or standing timber, there shall be allowed to the payee as a cost depletion deduction in respect of the bonus an amount equal to that proportion of his basis for depletion as provided in section 612 and § 1.612-1 which the amount of the bonus bears to the sum of the bonus and the royalties expected to be received. Such allowance shall be deducted from the payee's basis for depletion and the remainder of the basis is recoverable through depletion deductions as the royalties are thereafter received. (But see paragraph (e) of this section.) For example, a taxpayer leases mineral property to another reserving a one-eighth royalty and in addition receives a bonus of \$10,000. Assuming that the taxpayer's basis with respect to the mineral property is \$21,000 and that the royalties expected to be received are estimated to total \$20,000, the depletion on the bonus would be \$7,000

$$\left(\frac{\$21,000 \text{ (basis)} \times \$10,000 \text{ (bonus)}}{\$30,000 \text{ (bonus plus estimated royalties)}} \right)$$

The remaining \$14,000 of basis will be recovered through depletion as the royalties are received.

(2) If the grant of an economic interest in a mineral deposit or standing timber with respect to which a bonus was received expires, terminates, or is abandoned before there has been any income derived from the extraction of mineral or cutting of timber, the payee shall adjust his capital account by restoring

thereto the depletion deduction taken on the bonus and a corresponding amount must be returned as income in the year of such expiration, termination, or abandonment.

(3) In the case of the payor, payment of the bonus constitutes a capital investment made for the acquisition of an economic interest in a mineral deposit or standing timber recoverable through the depletion allowance. See paragraph (c) (5) (ii) of § 1.613-2 in cases in which percentage depletion is used.

(b) *Advanced royalties.* (1) If the owner of an operating interest in a mineral deposit or standing timber is required to pay royalties on a specified number of units of such mineral or timber annually whether or not extracted or cut within the year, and may apply any amounts paid on account of units not extracted or cut within the year against the royalty on the mineral or timber thereafter extracted or cut, the payee shall compute cost depletion on the number of units so paid for in advance of extraction or cutting and shall treat the amount so determined as an allowable deduction for depletion from the gross income of the year in which such payment or payments are made. No deduction for depletion by such payee shall be claimed or allowed in any subsequent year on account of the extraction or cutting in such year of any mineral or timber so paid for in advance and for which deduction has once been made. (But see paragraph (e) of this section.)

(2) If the right to extract minerals or to cut timber against which the advanced royalties may be applied expires, terminates or is abandoned before all such minerals or timber have been extracted or cut, the payee shall adjust his capital account by restoring thereto the depletion deductions made in prior years on account of any units of mineral or timber paid for in advance but not extracted or cut, and a corresponding amount must be returned as income for the year of such expiration, termination, or abandonment. (But see paragraph (e) of this section.)

(3) The payor, at his option, may treat the advanced royalties so paid or accrued in connection with mineral property as follows:

(i) As deductions from gross income for the year the advanced royalties are paid or accrued, or

(ii) As deductions from gross income for the year the mineral product, in respect of which the advanced royalties were paid, is sold.

For an exception to this treatment when the payor is a sublessor of coal, see paragraph (b) (3) of § 1.631-3. Every taxpayer must make an election as to the treatment of all such advanced royalties in his return for the first taxable year in which such amounts are paid or accrued. A taxpayer will be considered to have made an election in accordance with the manner in which such items are treated in the return. A failure to deduct any such items for the year paid or accrued will constitute an election to have all such items treated in accordance with subdivision (ii) of this subpara-

graph. Any election made under this section is binding for the taxable year for which made and for all subsequent years, and the taxpayer must treat all advanced royalties paid or accrued in all subsequent years in the same manner. This paragraph does not grant a new election. Any taxpayer who made an election under paragraph (e) of § 39.23 (m)-10 of Regulations 118 (26 CFR (1939) 39.23 (m)-10 (e)) or corresponding provisions of prior regulations is, by such election, bound with respect to treatment of such advanced royalties whether paid or accrued before or after December 31, 1953. See section 7807(b) (2). For additional rules relating to elections in the case of partners and partnerships, see section 703(b) and the regulations thereunder.

(4) The application of subparagraphs (2) and (3) of this paragraph may be illustrated by the following examples:

Example (1). B leased certain mineral lands from A under a lease in which A reserved a royalty of 10 cents a ton on minerals mined and sold by B. The lease also provided that B had to pay an annual minimum royalty of \$10,000 representing the amount due on 100,000 tons of the particular mineral whether or not B mined and sold that amount. It was further provided that, if B did not mine and sell 100,000 tons in any year, he could mine and sell in any subsequent year the amount of mineral on which he had paid the royalty without the payment of any additional royalty. However, this right of recoupment was limited to minerals mined and sold in any later year in excess of the 100,000 tons represented by the \$10,000 minimum royalty required to be paid for that later year. Assume that in 1956 B paid A the minimum royalty of \$10,000, but mined and sold only 60,000 tons of the mineral and that in 1957 he abandoned the lease without any further production. Since the \$10,000 represents royalties on 100,000 tons of mineral and only 60,000 tons were mined and sold, A must restore in 1957 to his capital account the depletion deductions taken in 1956 on \$4,000 on account of the 40,000 tons paid for in advance but not mined and sold, and must also return the corresponding amount as income in 1957.

Example (2). Assume that B, under the lease in example (1), paid the \$10,000 minimum royalty and mined no minerals in 1956 but that in 1957 B mined and sold 200,000 tons of mineral. If this is B's first such expenditure, B has an option, for the purpose of computing taxable income under section 63, to deduct in 1956 the \$10,000 paid in that year although no mineral was mined, or to take the deduction in 1957 when the mineral, for which the \$10,000 was paid in 1956, was mined and sold. (For treatment under percentage depletion, see example in paragraph (c) (5) (iii) of § 1.613-2.)

(c) *Delay rental.* (1) A delay rental is an amount paid for the privilege of deferring development of the property and which could have been avoided by abandonment of the lease, or by commencement of development operations, or by obtaining production.

(2) Since a delay rental is in the nature of rent it is ordinary income to the payee and not subject to depletion. The payor may at his election deduct such amount as an expense, or under section 266 and the regulations thereunder, charge it to depletable capital account.

(d) *Percentage depletion deduction with respect to bonus and advanced*

royalty. In lieu of the allowance based on cost depletion computed under paragraphs (a) and (b) of this section, the payees referred to therein may be allowed a depletion deduction in respect of any bonus or advanced royalty for the taxable year an amount computed on the basis of the percentage of gross income from the property as provided in section 613 and the regulations thereunder.

(e) *Cross reference.* In the case of bonuses and advanced royalties received in connection with a contract of disposal of timber or coal covered by section 631 (b) and (c), respectively, see that section and the regulations thereunder.

§ 1.612-4 [Reserved]

§ 1.613 Statutory provisions; percentage depletion.

SEC. 613. *Percentage depletion.*—(a) *General rule.* In the case of the mines, wells, and other natural deposits listed in subsection (b), the allowance for depletion under section 611 shall be the percentage, specified in subsection (b), of the gross income from the property excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed 50 percent of the taxpayer's taxable income from the property (computed without allowance for depletion). In no case shall the allowance for depletion under section 611 be less than it would be if computed without reference to this section.

(b) *Percentage depletion rates.* The mines, wells, and other natural deposits, and the percentages, referred to in subsection (a) are as follows:

- (1) 27½ percent—oil and gas wells.
- (2) 23 percent—
 - (A) Sulfur and uranium; and
 - (B) If from deposits in the United States—anthracite (to the extent that alumina and aluminum compounds are extracted therefrom), asbestos, bauxite, beryl, celestite, chromite, corundum, fluor spar, graphite, ilmenite, kyanite, mica, olivine, quartz crystals (radio grade), rutile, block steatite talc, and zircon, and ores of the following metals: antimony, bismuth, cadmium, cobalt, columbium, lead, lithium, manganese, mercury, nickel, platinum and platinum group metals, tantalum, thorium, tin, titanium, tungsten, vanadium, and zinc.
- (3) 15 percent—ball clay, bentonite, china clay, sagger clay, metal mines (if paragraph (2) (B) does not apply), rock asphalt, and vermiculite.
- (4) 10 percent—asbestos (if paragraph (2) (B) does not apply), brucite, coal, lignite, perlite, sodium chloride, and wollastonite.
- (5) 5 percent—
 - (A) Brick and tile clay, gravel, mollusk shells (including clam shells and oyster shells), peat, pumice, sand, scoria, shale, and stone, except stone described in paragraph (6); and
 - (B) If from brine wells—bromine, calcium chloride, and magnesium chloride.
- (6) 15 percent—all other minerals (including, but not limited to, apatite, barite, borax, calcium carbonates, refractory and fire clay, diatomaceous earth, dolomite, feldspar, fullers earth, garnet, gilsonite, granite, limestone, magnesite, magnesium carbonates, marble, phosphate rock, potash, quartzite, slate, soapstone, stone (used or sold for use by the mine owner or operator as dimension stone or ornamental stone), thenardite, tripoli, trona, and (if paragraph (2) (B) does not apply) bauxite, beryl, flake graphite, fluor spar, lepidolite, mica, spodumene, and talc, including pyrophyllite), except that, unless sold on bid in direct competition with a bona fide bid to sell a mineral listed in paragraph (3), the percentage shall

be 5 percent for any such other mineral when used, or sold for use, by the mine owner or operator as rip rap, ballast, road material, rubble, concrete aggregates, or for similar purposes. For purposes of this paragraph, the term "all other minerals" does not include—

(A) Soil, sod, dirt, turf, water, or mosses; or

(B) Minerals from sea water, the air, or similar inexhaustible sources.

(c) *Definition of gross income from property.* For purposes of this section—

(1) *Gross income from the property.* The term "gross income from the property" means, in the case of property other than an oil or gas well, the gross income from mining.

(2) *Mining.* The term "mining" includes not merely the extraction of the ores or minerals from the ground but also the ordinary treatment processes normally applied by mine owners or operators in order to obtain the commercially marketable mineral product or products, and so much of the transportation of ores or minerals (whether or not by common carrier) from the point of extraction from the ground to the plants or mills in which the ordinary treatment processes are applied thereto as is not in excess of 50 miles unless the Secretary or his delegate finds that the physical and other requirements are such that the ore or mineral must be transported a greater distance to such plants or mills.

(3) *Extraction of the ores or minerals from the ground.* The term "extraction of the ores or minerals from the ground" includes the extraction by mine owners or operators of ores or minerals from the waste or residue of prior mining. The preceding sentence shall not apply to any such extraction of the mineral or ore by a purchaser of such waste or residue or of the rights to extract ores or minerals therefrom.

(4) *Ordinary treatment processes.* The term "ordinary treatment processes" includes the following:

(A) In the case of coal—cleaning, breaking, sizing, dust allaying, treating to prevent freezing, and loading for shipment;

(B) In the case of sulfur recovered by the Frasch process—pumping to vats, cooling, breaking, and loading for shipment;

(C) In the case of iron ore, bauxite, ball and sagger clay, rock asphalt, and minerals which are customarily sold in the form of a crude mineral product—sorting, concentrating, and sintering to bring to shipping grade and form, and loading for shipment;

(D) In the case of lead, zinc, copper, gold, silver, or fluor spar ores, potash and ores which are not customarily sold in the form of the crude mineral product—crushing, grinding, and beneficiation by concentration (gravity, flotation, amalgamation, electrostatic, or magnetic), cyanidation, leaching, crystallization, precipitation (but not including as an ordinary treatment process electrolytic deposition, roasting, thermal or electric smelting, or refining), or by substantially equivalent processes or combination of processes used in the separation or extraction of the product or products from the ore, including the furnacing of quicksilver ores; and

(E) The pulverization of talc, the burning of magnesite, and the sintering and nodulizing of phosphate rock.

§ 1.613-1 Percentage depletion; general rule.

In the case of a taxpayer computing the deduction for depletion under section 611 with respect to minerals on the basis of a percentage of gross income from the property, as defined in section 613(c) and § 1.613-3, such deduction shall be the percentage of such gross income as specified in section 613(b) and § 1.613-2. The deduction shall not ex-

ceed 50 percent of the taxpayer's taxable income from the property (computed without allowance for depletion). Such taxable income shall be computed in accordance with § 1.613-4. In no case shall the deduction for depletion computed under this section be less than the deduction computed upon the cost or other basis of the property provided in section 612 and the regulations thereunder. The apportionment of the deduction between the several owners of economic interests in a mineral deposit will be made as provided in paragraph (c) of § 1.611-1. For rules with respect to "gross income from the property" and for definition of the term "mining", see § 1.613-3. For definitions of the terms "property", "mineral deposit", and "minerals", see paragraph (d) of § 1.611-1.

§ 1.613-2 Percentage depletion rates.

(a) *In general.* Subject to the provisions of paragraph (b) of this section and as provided in section 613(b), in the case of mines, wells, or other natural deposits, a taxpayer may deduct as an allowance for depletion under section 611 the percentages of gross income from the property as set forth in subparagraphs (1), (2), and (3) of this paragraph.

(1) *Without regard to situs of deposits.* The following rates are applicable to the minerals listed in this subparagraph regardless of the situs of the deposits from which the minerals are produced:

- (i) 27½ percent—Gas wells, oil wells.
- (ii) 23 percent—Sulfur, uranium.
- (iii) 15 percent—Ball clay, bentonite, china clay, metal mines,¹ sagger clay, rock asphalt, vermiculite.
- (iv) 10 percent—Asbestos,¹ brucite, coal, lignite, perlite, sodium chloride, wollastonite.
- (v) 5 percent—Brick and tile clay, gravel, mollusk shells (including clam shells and oyster shells), peat, pumice, sand, scoria, shale, stone (except dimension or ornamental stone).

If from brine wells—Bromine, calcium chloride, magnesium chloride.

(2) *Production from United States deposits.* A rate of 23 percent is applicable to the minerals listed in this subparagraph if produced from deposits within the United States:

Anorthosite. ²	Ilmenite.
Asbestos.	Kyanite.
Bauxite.	Mica.
Beryl.	Olivine.
Celestite.	Quartz crystals (radio grade).
Chromite.	Rutile.
Corundum.	Block steatite talc.
Fluorspar.	Zircon.
Graphite.	

Ores of the following metals—

Antimony.	Platinum.
Bismuth.	Platinum group metals.
Cadmium.	Tantalum.
Cobalt.	Thorium.
Columbium.	Tin.
Lead.	Titanium.
Lithium.	Tungsten.
Manganese.	Vanadium.
Mercury.	Zinc.
Nickel.	

¹ Not applicable if the rate prescribed in subparagraph (2) of this paragraph is applicable.

² The rate prescribed in this subparagraph does not apply except to the extent that alumina and aluminum compounds are extracted therefrom.

(3) *Other minerals.* A rate of 15 percent is applicable to the minerals listed in this subparagraph regardless of the situs of the deposits from which the minerals are produced, provided the minerals are not used or sold for use by the mine owner or operator as rip rap, ballast, road material, rubble, concrete aggregates, or for similar purposes. If, however, such minerals are sold or used for the purposes described in the preceding sentence, a rate of 5 percent is applicable to any of such minerals unless sold on bid in direct competition with a bona fide bid to sell any of the minerals listed in subdivision (iii) of subparagraph (1) of this paragraph, in which case the rate is 15 percent. In addition, the provisions of this subparagraph are not applicable with respect to any of the minerals listed herein if the rate prescribed in subparagraph (2) of this paragraph is applicable:

Aplite.	Magnesite.
Barite.	Magnesium carbonates.
Bauxite. ²	Marble.
Beryl. ¹	Mica. ²
Borax.	Phosphate rock.
Calcium carbonates.	Potash.
Clay, refractory and fire.	Quartzite.
Diatomaceous earth.	Slate.
Dolomite.	Soapstone.
Feldspar.	Spodumene. ²
Flake graphite. ²	Stone (dimension or ornamental). ⁴
Fluorspar. ²	Talc. ² (including pyrophyllite).
Fullers earth.	Therandite.
Garnet.	Tripoli.
Gilsonite.	Trona.
Granite.	All other minerals.
Lepidolite. ²	
Limestone.	

(b) *Definition of terms.* (1) For purposes of this section the minerals indicated below shall have the following meanings:

(i) Clay, brick and tile—Clay used or sold for use in the manufacture of common brick, drain and roofing tile, sewer pipe, flower pots, and kindred products (other than clay specifically identified as a clay for which a 15 percent rate of percentage allowance is provided).

(ii) Clay, refractory and fire—Clay which has a pyrometric cone equivalent of 19 or higher.

(iii) Pumice—All pumice including pumicite.

(iv) Scoria—Only scoria produced from natural deposits.

(2) For purposes of this section, the term "United States" means the States and the District of Columbia. See section 7701(a) (9).

(3) For purposes of this section, the term "dimension stone" means blocks and slabs of natural stone, subsequently cut to definite shapes and sizes and used or sold for such uses as building stone (excluding rubble), monumental stone, paving blocks, curbing and flagging. For purposes of this section, "ornamental stone" means blocks and slabs of natural stone, subsequently cut to definite shapes and sizes and used or sold for use for making ornaments or statues.

³ The provisions of this subparagraph are not applicable if the rate prescribed in subparagraph (2) is applicable.

⁴ The 15 percent rate is applicable only to stone used or sold for use by the mine owner or operator as dimension stone or ornamental stone.

(4) For purposes of this section, the term "all other minerals" does not include (i) soil, sod, dirt, turf, water, or mosses; or (ii) minerals from sea water, the air, or similar inexhaustible sources. However, the term "all other minerals" is not limited in meaning to the minerals listed in section 613(b), but includes all other minerals (except those to which a specific percentage rate applies under subparagraphs (1), (2), (3), (4), and (5), of section 613(b)): For example, gypsum, novaculite, natural mineral pigments, quartz sand and quartz pebbles, graphite and kyanite (if section 613(b) (2) (B) does not apply), and anorthosite to the extent that alumina and aluminum compounds are not extracted therefrom. The 15 percent rate applies to such "all other minerals" when used or sold for use by the mine owner or operator for purposes other than as rip rap, ballast, road material, rubble, concrete aggregates, or for similar purposes. When any such minerals are used or sold for use by the mine owner or operator as rip rap, ballast, road material, rubble, concrete aggregates, or for similar purposes, the 5 percent rate applies except that, when sold for such use by the mine owner or operator on a bid in direct competition with a bona fide bid to sell a mineral listed in section 613(b) (3), the 15 percent rate applies. For example, limestone sold on a bid in direct competition with a bona fide bid to sell rock asphalt for road building purposes may be entitled to a 15 percent rate. In every case the taxpayer must establish to the satisfaction of the district director that there was a bona fide bid to sell a mineral listed under section 613(b) (3) by a person other than the taxpayer, and that the mineral sold by the taxpayer was sold on a bid in direct competition with such bona fide bid to sell such other material.

(c) *Rules for application of paragraph (a) of this section.* (1) In no case may the allowance for depletion computed upon the basis of a percentage of gross income from the property exceed 50 percent of the taxpayer's taxable income from the property (computed without allowance for depletion). For rules relating to the computation of such taxable income, see § 1.613-4.

(2) In cases in which there are produced from a mineral property two or more minerals, each entitled to a different percentage depletion rate under section 613(b) and this section, the percentage depletion allowance is the sum of the results obtained by applying the percentage applicable to each mineral to the "gross income from the property" attributable to such mineral. The sum so computed is subject to the limitation provided in section 613(a) and § 1.613-1, that is, 50 percent of the taxpayer's taxable income from the property (computed without allowance for depletion). Such taxable income (computed in accordance with § 1.613-4) is the total taxable income resulting from the sale of all minerals produced from the mineral property. The provisions of this subparagraph may be illustrated by the following example:

Example. Pyrite, an iron sulfide, may be sold for either its sulfur content or its iron

content, or both. Sulfur is entitled to a percentage depletion deduction based on 23 percent of gross income from the property whereas the percentage depletion deduction for iron is based on 15 percent of such gross income. Therefore, in the case of a taxpayer who sells pyrite for both its sulfur and iron content, 23 percent of his gross income from sulfur plus 15 percent of his gross income from iron would be his maximum allowable percentage depletion deduction. However, this maximum deduction would be subject to the limitation provided for in section 613(a), i.e., 50 percent of "taxable income from the property (computed without allowance for depletion)", such taxable income being the overall taxable income resulting from the sale of both minerals contained in the deposit.

(3) Except as provided in section 613 (d) and the regulations thereunder relating to special rules for determining rates of depletion for taxable years ending after December 31, 1953, to which the Internal Revenue Code of 1939 applies—

(i) The percentage rates set forth in this section are applicable only for taxable years beginning after December 31, 1953, and ending after August 16, 1954; and

(ii) The percentage rates set forth in § 39.23(m)-5 of Regulations 118 (26 CFR (1939) 39.23(m)-5) are applicable for taxable years beginning before January 1, 1954, or ending before August 17, 1954.

(4) Percentage depletion is not allowable with respect to the income from a disposal of coal (including lignite) with a retained economic interest to the extent that such income is treated as from a sale of coal under section 631(c) and the regulations thereunder. Rents or royalties paid or incurred by a taxpayer with respect to coal (including lignite) shall be excluded by such taxpayer in determining "gross income from the property" without regard to the treatment under section 631(c) of such rents and royalties in the hands of the recipient.

(5) (i) In all cases there shall be excluded in determining the "gross income from the property" an amount equal to any rents or royalties (which are depletable income to the payee) which are paid or incurred by the taxpayer in respect of the property and are not otherwise excluded from "gross income from the property". The following example illustrates this rule:

Example. A leases coal-bearing lands to B on condition that B will annually pay a royalty of 25 cents a ton on coal mined and sold by B. During the year 1956, B mines and sells i.o.b. mine 100,000 tons of coal for \$600,000. In computing "gross income from the property" for the year 1956, B will exclude \$25,000 (100,000 tons × \$0.25) in computing his allowable percentage depletion deduction. B's allowable percentage depletion deduction (without reference to the limitation based on taxable income from the property) for the year 1956 will be \$57,500 $(\$600,000 - \$25,000) \times 10$ percent).

(ii) If bonus payments have been paid in respect of the property in any taxable year or any prior taxable years, there shall be excluded in determining the "gross income from the property", an amount equal to that part of such payments which is allocable to the product

sold during the taxable year. The following example illustrates this rule:

Example. In 1956, A leases oil bearing lands to B, receiving \$200,000 as a bonus and reserving a royalty of one-eighth of the proceeds of all oil produced and sold. It

$$\left(\frac{100,000 \text{ bbls. sold}}{1,000,000 \text{ bbls. estimated to be available}} \times \$200,000 \text{ bonus} \right)$$

the portion of the bonus allocable to the oil produced and sold during the year. However, in computing B's taxable income under section 63, the \$20,000 attributable to the bonus payment shall not be either excluded or deducted from B's gross income computed under section 61. (See paragraph (a) (3) of § 1.612-3.)

(iii) If advanced royalties have been paid in respect of the property in any taxable year, the amount excluded from "gross income from the property" of the payor for the current taxable year on account of such payment shall be an amount equal to the deduction for such taxable year taken on account of such payment pursuant to paragraph (b) (3) of § 1.612-3.

Example. If B in example (2) in paragraph (b) (4) of § 1.612-3, elects to deduct in 1956 the \$10,000 paid to A in that year, he must exclude the same amount from "gross income from the property" in 1956; however, if B elects to defer the deduction until 1957 when he mined and sold the mineral, he must exclude the \$10,000 from "gross income from the property" in 1957.

§ 1.613-3 Gross income from the property.

(a) *Oil and gas wells.* In the case of oil and gas wells, "gross income from the property", as used in section 613(c) (1), means the amount for which the taxpayer sells the oil or gas in the immediate vicinity of the well. If the oil or gas is not sold on the premises but is manufactured or converted into a refined product prior to sale, or is transported from the premises prior to sale, the gross income from the property shall be assumed to be equivalent to the representative market or field price of the oil or gas before conversion or transportation.

(b) [Reserved]

(c) [Reserved]

(d) [Reserved]

(e) *Application to treat, as mining, transportation in excess of 50 miles.* If a taxpayer desires to include in the computation of his gross income from mining transportation in excess of 50 miles from the point of extraction of the minerals from the ground, he shall file an original and one copy of an application for the inclusion of such greater distance with the Commissioner of Internal Revenue, Washington 25, D.C., attention of the Special Technical Services Division, Engineering and Valuation Branch. The application must include a statement setting forth in detail the facts concerning the physical and other requirements which prevented the construction and operation of the plant (in which ordinary treatment processes are applied) at a place nearer to the point of extraction from the ground. These facts must be sufficient to apprise the Commissioner of the exact basis of the application. If

is estimated at the time the lease is entered into that there are 1,000,000 barrels of oil recoverable. In 1956, B produces and sells 100,000 barrels for \$240,000. In computing his "gross income from the property" for the year 1956, B will exclude \$30,000 $(\frac{1}{8}$ of \$240,000), the royalty paid to A and \$20,000

the taxpayer's return is filed prior to receipt of notice of the Commissioner's action upon the application, a copy of such application shall be attached to the return. If, after an application is approved by the Commissioner, there is a material change in any of the facts relied upon in such application, a new application must be submitted by the taxpayer.

(f) *Extraction from waste or residue.* "Extraction of ores or minerals from the ground" means not only the extraction of ores or minerals from a deposit, but also the extraction by mine owners or operators of ores or minerals from waste or residue of prior mining. The preceding sentence does not apply to any such extraction of ores or minerals by the purchaser of such waste or residue or the purchaser of the rights to extract ores or minerals from such waste or residue. The term "purchaser" does not apply to any person who acquires mineral property, including such waste or residue, in a tax-free exchange, such as a corporate reorganization, from a person who was entitled to a depletion allowance upon ores or minerals produced from such waste or residue, or from a person who would have been entitled to such depletion allowance had section 613(c) (3) been in effect at the time of the transfer. The term "purchaser" also does not apply to a lessee who has renewed a mineral lease if the lessee was entitled to a depletion allowance (or would have been so entitled had section 613(c) (3) been in effect at the time of the renewal) upon ores or minerals produced from such waste or residue before renewal of the lease. It is not necessary, for purposes of the preceding sentence, that the mineral lease contain an option for renewal. The term "purchaser" does include a person who acquires such waste or residue in a taxable transaction, even though such waste or residue is acquired merely as an incidental part of the entire mineral enterprise. It is immaterial whether the waste or residue results from the process of extraction from the ground or from application of ordinary treatment processes. However, extraction of ores or minerals from waste or residue which results from processes which are not allowable as ordinary treatment processes is not treated as mining. For special rules with respect to certain corporate acquisitions referred to in section 381(a), see section 381(c) (18) and the regulations thereunder.

§ 1.613-4 Taxable income from the property.

The term "taxable income from the property (computed without allowance for depletion)" as used in section 613 and this part, means "gross income from the property" as defined in section 613(c) and § 1.613-3, less allowable

deductions (excluding any deduction for depletion) which are attributable to the mineral property, including allowable deductions attributable to ordinary treatment processes and mining transportation, with respect to which depletion is claimed. These deductions include administrative and financial overhead, operating expenses, selling expenses, depreciation, taxes, losses sustained, etc. In the case of oil and gas properties, such deductions include intangible drilling and development costs deducted under section 263(c) and § 1.612-4. In the case of a property other than an oil or gas property, such deductions include deductions which are attributable to processes and transportation treated as mining under section 613(c) and § 1.613-3 and amounts of exploration or development expenditures which are deducted for the taxable year under sections 615 and 616. Expenditures which may be attributable to both the mineral property upon which depletion is claimed and other activities shall be fairly apportioned. Furthermore, where a taxpayer has more than one mineral property, deductions not directly attributable to a specific mineral property shall be fairly apportioned among the several properties.

§ 1.613-5 Statement to be attached to return when depletion is claimed on percentage basis.

In addition to the requirements set forth in paragraph (g) of § 1.611-2, a taxpayer who claims the percentage depletion deduction under section 613 for any taxable year shall attach to his return for such year a statement setting forth in complete, summary form, with respect to each property for which such deduction is allowable, the following information:

(a) All data necessary for the determination of the "gross income from the property", as defined in § 1.613-3, including—

(1) Amounts paid as rents or royalties including amounts which the recipient treats under section 631(c),

(2) Proportion and amount of bonus excluded, and

(3) Amounts paid to holders of other interests in the mineral deposit.

(b) All additional data necessary for the determination of the "taxable income from the property (computed without the allowance for depletion)", as defined in § 1.613-4.

§ 1.615 Statutory provisions; exploration expenditures.

Sec. 615. Exploration expenditures—(a) In general. In the case of expenditures paid or incurred during the taxable year for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral, and paid or incurred before the beginning of the development stage of the mine or deposit, there shall be allowed as a deduction in computing taxable income so much of such expenditures as does not exceed \$100,000. This section shall apply only with respect to the amount of such expenditures which, but for this section, would not be allowable as a deduction for the taxable year. This section shall not apply to expenditures for the acquisition or improvement of property of a character which is subject to the allowance for depreciation provided in sec-

tion 167, but allowances for depreciation shall be considered, for purposes of this section, as expenditures paid or incurred. In no case shall this section apply with respect to amounts paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of oil or gas.

(b) *Election of taxpayer.* If the taxpayer elects, in accordance with regulations prescribed by the Secretary or his delegate, to treat as deferred expenses any portion of the amount deductible for the taxable year under subsection (a), such portion shall not be deductible in the manner provided in subsection (a) but shall be deductible on a ratable basis as the units of produced ores or minerals discovered or explored by reason of such expenditures are sold. An election made under this subsection for any taxable year shall be binding for such year.

(c) *Limitation.* This section shall not apply to any amount paid or incurred in any taxable year if in any 4 preceding years a deduction or election under this section, or the corresponding provision of prior laws, has been allowed to, or exercised by—

(1) The taxpayer, or

(2) The individual or corporation who has transferred to the taxpayer any mineral property.

Paragraph (2) shall apply only if (A) the taxpayer was required to take into account under section 23(f)(3) of the Internal Revenue Code of 1939 the deduction allowed to or election exercised by such individual or corporation; (B) the taxpayer would be entitled under section 381(c)(10) to deduct expenses deferred under this section had the distributor or transferor corporation elected to defer such expenses; or (C) the taxpayer acquired any mineral property under circumstances which make section 334(b), 362 (a) and (b), 372(a), 373(b)(1), 723, 732, 1051, or 1082 apply to such transfer.

(d) *Adjusted basis of mine or deposit.* The amount of expenditures which are treated under subsection (b) as deferred expenses shall be taken into account in computing the adjusted basis of the mine or deposit, but such amounts, and the adjustments to basis provided in section 1016(a)(10) shall be disregarded in determining the adjusted basis of the property for the purpose of computing a deduction for depletion under section 611.

§ 1.615-1 Exploration expenditures.

(a) *General rule.* Section 615 prescribes rules for the treatment of expenditures for ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (other than oil or gas) paid or incurred by the taxpayer before the beginning of the development stage of the mine or other natural deposit. The development stage of the mine or other natural deposit will be deemed to begin at the time when, in consideration of all the facts and circumstances (including the actions of the taxpayer), deposits of ore or other mineral are shown to exist in sufficient quantity and quality to reasonably justify commercial exploitation by the taxpayer. Such expenditures hereinafter in the regulations under section 615 will be referred to as exploration expenditures. Under section 615(a), a taxpayer may, at his option, deduct exploration expenditures paid or incurred in an amount not to exceed \$100,000 for any taxable year. Under section 615(b) and § 1.615-2 he may elect to defer any part of such amount and deduct such part on a ratable basis as the minerals benefited by such expenditures are sold. In

any taxable year in which the taxpayer does not treat exploration expenditures under either of these methods, they will be charged to depletable capital account. The option to deduct under section 615 (a), and the election to defer under section 615(b), may be exercised in only four taxable years as provided in section 615(c) and § 1.615-4.

(b) *Expenditures to which section 615 is not applicable.* (1) Section 615 is not applicable to expenditures which would be allowed as a deduction for the taxable year without regard to such section.

(2) Section 615 is not applicable to expenditures which are reflected in improvements subject to allowances for depreciation under sections 167 and 611. However, allowances for depreciation of such improvements which are used in the exploration of ores or minerals are considered exploration expenditures under section 615. If such improvements are used only in part for exploration during a taxable year, an allocable portion of the allowance for depreciation shall be treated as an exploration expenditure.

(3) Section 615 is applicable to exploration expenditures paid or incurred by a taxpayer in connection with the acquisition of a fractional share of the working or operating interest to the extent of the fractional interest so acquired by the taxpayer. The expenditures attributable to the remaining fractional share shall be considered as the cost of his acquired interest and shall be recovered through depletion allowances. For example, taxpayer A owns mineral leases on unexplored mineral lands and agrees to convey an undivided three-fourths ($\frac{3}{4}$) interest in such leases to taxpayer B provided B will pay all of the exploration expenditures for ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral which will be incurred before the beginning of the development stage. B shall treat three-fourths of such amount under section 615, and shall treat one-fourth of such amount as part of the cost of his interest, recoverable through depletion.

(4) The provisions of section 615 do not apply to costs of exploration which are reflected in the amount which the taxpayer paid or incurred to acquire the property. Such provisions apply only to costs paid or incurred by the taxpayer for exploration undertaken directly or through a contract by the taxpayer. See, however, sections 381(a) and 381(c)(10) for special rules with respect to deferred exploration expenditures in certain corporate acquisitions.

§ 1.615-2 Deduction of exploration expenditures in the year paid or incurred.

(a) *In general.* (1) Subject to the total limitation of \$100,000, a taxpayer who has made exploration expenditures with respect to more than one mine or other natural deposit may deduct in a taxable year any portion of the expenditures attributable to each such mine or deposit. With respect to a particular mine or other natural deposit, the taxpayer may deduct a portion of the exploration expenditures under section 615(a) and may defer and deduct the

balance of such expenditures under section 615(b). He must charge to capital account any amount in excess of \$100,000 in any taxable year and he must charge to capital account whatever amount has not been deducted currently or deferred. For example, taxpayer A has three mines, X, Y, and Z. In the taxable year 1957, A makes exploration expenditures of \$75,000 with respect to each mine. The total allowable deduction for exploration expenditures is \$100,000. A deducts \$50,000 and defers \$25,000 with respect to X. He deducts \$25,000, and charges to capital account \$50,000 with respect to Y, and charges to capital account the entire \$75,000 paid with respect to Z. Thus, A has deducted or deferred \$100,000, and capitalized the excess.

(2) The taxpayer cannot change his treatment of exploration expenditures for any taxable year after the due date (including extensions of time) for filing the return for such taxable year except where it is subsequently determined that any part of such exploration expenditures deducted under section 615(a) or deferred under section 615(b) are not exploration expenditures for the taxable year. In such case, exploration expenditures required to be charged to capital account for such taxable year by reason of the limitation may be deducted or deferred (to the extent of the subsequent determination) and proper adjustment made to capital account. A taxpayer claiming a deduction under section 615(a) shall indicate clearly on his income tax return the amount of the deduction claimed under such section with respect to each mine or other natural deposit. Such mine or deposit shall be identified by an adequate description.

§ 1.615-3 Election to defer exploration expenditures.

(a) *General rule.* A taxpayer may defer any portion of the exploration expenditures made with respect to each mine or other natural deposit, subject to the limitations of time and amount described in section 615(c) and § 1.615-4. The amounts so deferred shall be deducted ratably as the units of the ores or minerals discovered or explored by reason of such expenditures are sold.

(b) *Effect and manner of making election.* (1) The election to defer exploration expenditures shall apply only to expenditures for the taxable year for which made. However, once made, the election shall be binding with respect to the expenditures for that taxable year. Thus, a taxpayer cannot revoke his election for any reason whatsoever.

(2) The election shall be made for each mine or other natural deposit by a clear indication on the return or by a statement filed with the district director with whom the return was filed, not later than the time prescribed by law for filing such return (including extensions thereof) for the taxable year to which such election is applicable.

(c) *Expenditures made by the owner who retains a non-operating mineral interest.* (1) A taxpayer who elects to defer exploration expenditures and thereafter transfers his interest in the

mine or other natural deposit, retaining an economic interest therein, shall deduct an amount attributable to such interest on a pro rata basis as the interest pays out. For example, a taxpayer who defers exploration expenditures and then leases his deposit, retaining a royalty interest therein, shall deduct the deferred expenditures ratably as he receives royalties. If the taxpayer receives a bonus or advanced royalties in connection with the transfer of his interest, he shall deduct deferred expenditures allocable to such bonus or advanced royalties in an amount which is in the same proportion to the total of such costs as the bonus or advanced royalties bears to the bonus and total royalties expected to be received. Also, in the case of a transfer of a mine or other natural deposit by a taxpayer who retains a production payment therein, he shall deduct the exploration expenditures ratably over the payments expected to be received.

(2) Where a taxpayer receives an amount, in addition to retaining an economic interest, which amount is treated as from the sale or exchange of a capital asset or property treated under section 1231 (except coal to which section 631(c) applies), the deferred exploration expenditures shall be allocated between the interest sold and the interest retained in proportion to the fair market values of each interest as of the date of sale. The amount allocated to the interest sold may not be deducted, but shall be a part of the basis of such interest.

(d) *Losses from abandonment.* Section 165 and the regulations thereunder contain general rules relating to the treatment of losses resulting from abandonment.

(e) *Computation of amount of deduction.* The amount of the deduction allowable during the taxable year is an amount A, which bears the same ratio to B (the total deferred exploration expenditures for a particular mine or other natural deposit reduced by the amount of such expenditures deducted in prior taxable years) as C (the number of units of the ore or mineral benefited by such expenditures sold during the taxable year) bears to D (the number of units of ore or mineral benefited by such expenditures remaining as of the taxable year). For the purposes of this proportion, the "number of units of ore or mineral benefited by such expenditures remaining as of the taxable year" is the number of units of ore or mineral benefited by the deferred exploration expenditures remaining at the end of the year to be recovered from the mine or other natural deposit (including units benefited by such expenditures recovered but not sold) plus the number of units benefited by such expenditures sold within the taxable year. The principles outlined in § 1.611-2 are applicable in estimating the number of units remaining as of the taxable year and the number of units sold during the taxable year. The estimate is subject to revision in accordance with that section in the event it is ascertained from any source, such as operations or development work, that the remaining units are materially greater or less than the number of units remaining from a prior estimate.

§ 1.615-4 Limitation of amount deductible.

(a) *In general.* In any taxable year a taxpayer may deduct or defer exploration expenditures, to which section 615 is applicable, in an amount not in excess of \$100,000. The taxpayer may avail himself of the provisions of section 615 in any four taxable years (including taxable years of less than 12 months and taxable years subject to the 1939 Code). Such four taxable years need not be consecutive. In determining the number of years in which a taxpayer has availed himself of section 615, a year for which he makes an election to defer exploration expenditures shall count as one year. Any subsequent taxable year in which such deferred expenditures are deducted shall not be taken into account as one of the four years. For purposes of the 4-year limitation, a year in which both a deduction and an election to defer are availed of shall be taken into account as only one year.

(b) *Transferee of mineral property.*

(1) The taxpayer shall take into account for purposes of the 4-year limitation any year in which an individual or corporation, who has transferred any mineral property to him, has previously deducted or deferred exploration expenditures under section 615, or section 23(ff) of the Internal Revenue Code of 1939, provided any of the following subdivisions of this subparagraph are applicable:

(i) The taxpayer under section 23(ff) of the Internal Revenue Code of 1939 was required to take into account a taxable year in which his transferor was allowed the deduction or exercised the election to defer.

(ii) The taxpayer would be entitled under section 381(c)(10) to deduct exploration expenditures if the transferor (or distributor) corporation had elected to defer such expenditures. For example, if the taxpayer acquired any mineral property in a transaction described in section 381(a) (relating to the acquisition of assets through certain corporate liquidations and reorganizations), the years in which the transferor exercised the election to defer or deduct exploration expenditures shall be taken into account in computing the taxpayer's 4-year limitation. For a further limitation, see section 381(c)(10).

(iii) The taxpayer acquired any mineral property under circumstances which make applicable the following sections of the Internal Revenue Code:

(a) Section 334(b), relating to the liquidation of a subsidiary where the basis of the property in the hands of the distributee is the same as it would be in the hands of the transferor.

(b) Section 362 (a) and (b), relating to property acquired by a corporation as paid-in surplus or as a contribution to capital, or in connection with a transaction to which section 351 applies.

(c) Section 372(a), relating to reorganization in certain receiverships and bankruptcy proceedings.

(d) Section 373(b)(1), relating to property of a railroad corporation acquired in certain bankruptcy or receivership proceedings.

(e) Section 1051, relating to property acquired by a corporation that is a member of an affiliated group.

(f) Section 1082, relating to property acquired pursuant to a Securities Exchange Commission order.

(2) For purposes of subparagraph (1) of this paragraph, it is immaterial whether or not a deduction has been allowed or an election has been made by the transferor with respect to the specific mineral property transferred.

(3) Where a mineral property is acquired under any circumstance except those described in subparagraph (1) of this paragraph, the taxpayer is not required to take into account the election exercised by or deduction allowed to his transferor.

(4) For purposes of applying the limitations imposed by section 615(c), the partner, and not the partnership, shall be considered as the taxpayer. See paragraph (a) (8) (iii) of § 1.702-1.

(5) The application of the provisions of paragraph (b) of this section may be illustrated by the following examples:

Example (1). Assume that a taxpayer who has never claimed the benefits of section 615 received in 1956 a mineral deposit from X Corporation upon a distribution in complete liquidation of the latter under conditions which would make the provisions of section 334(b) applicable in determining the basis of the property in the hands of the taxpayer, and that during the year 1955 X Corporation expended \$60,000 for exploration expenditures which X Corporation elected to treat as deferred expenses. On the basis of these facts, the taxpayer may deduct or defer for any three (not necessarily consecutive) subsequent taxable years exploration expenditures made in those years not to exceed \$100,000 in any year.

Example (2). Assume the same facts stated in example (1) except that, prior to acquisition by the taxpayer of the deposit from corporation X in 1956, corporation X had acquired the deposit in 1954 in a similar distribution from Y Corporation which, in the years 1952 and 1953, deducted exploration costs paid in respect of an entirely different deposit in the amount of \$30,000 and \$50,000, respectively. Under these circumstances, the taxpayer may deduct or defer exploration expenditures paid or incurred for only one taxable year in an amount not in excess of \$100,000.

Example (3). In 1957, A and B transfer assets to a corporation under circumstances making section 351 applicable to such a transfer. Among the assets transferred by A is a mineral lease with respect to certain coal lands. A has deducted exploration expenditures under section 615 for the years 1954 and 1956 made with respect to other deposits not included in the transfer to the corporation. The corporation shall be charged with the two years previously used by A and may avail itself of the provisions of section 615 for only two additional years.

Example (4). In 1956, A, B, and C form a partnership for the purpose of exploring for, developing, and producing uranium. A contributes a uranium lease to the partnership. A has individually made exploration expenses with respect to other mineral properties not contributed to the partnership and which he has deducted under section 615(a) for the years 1954 and 1955. B contributes a uranium lease to the partnership on which he made exploration expenditures in 1955 which he elected to defer under section 615(b). This is the only year in which B has used section 615. C contributes only cash to the partnership and has not previously used section 615. Subject to the

limitation of section 615, A may deduct or defer exploration expenses for two more taxable years (either as to expenditures incurred by him individually or with respect to his distributive share of partnership exploration expenses). B may similarly deduct or defer exploration expenditures for three more years. C may deduct or defer exploration expenditures for four years.

§ 1.615-5 Time for making election with respect to returns due on or before the first day of the first month which begins more than 90 days after the regulations are published.

In the case of any taxable year beginning after December 31, 1953, and ending after August 16, 1954, the income tax return for which is due not later than the first day of the first month which begins more than 90 days after regulations adopted under section 615 are published in the FEDERAL REGISTER, the time for exercising any option or making any election under section 615 shall expire on the first day of such month.

§ 1.616 Statutory provisions; development expenditures.

Sec. 616. Development expenditures—(a) In general. Except as provided in subsection (b), there shall be allowed as a deduction in computing taxable income all expenditures paid or incurred during the taxable year for the development of a mine or other natural deposit (other than an oil or gas well) if paid or incurred after the existence of ores or minerals in commercially marketable quantities has been disclosed. This section shall not apply to expenditures for the acquisition or improvement of property of a character which is subject to the allowance for depreciation provided in section 167, but allowances for depreciation shall be considered, for purposes of this section, as expenditures.

(b) Election of taxpayer. At the election of the taxpayer, made in accordance with regulations prescribed by the Secretary or his delegate, expenditures described in subsection (a) paid or incurred during the taxable year shall be treated as deferred expenses and shall be deductible on a ratable basis as the units of produced ores or minerals benefited by such expenditures are sold. In the case of such expenditures paid or incurred during the development stage of the mine or deposit, the election shall apply only with respect to the excess of such expenditures during the taxable year over the net receipts during the taxable year from the ores or minerals produced from such mine or deposit. The election under this subsection, if made, must be for the total amount of such expenditures, or the total amount of such excess, as the case may be, with respect to the mine or deposit, and shall be binding for such taxable year.

(c) Adjusted basis of mine or deposit. The amount of expenditures which are treated under subsection (b) as deferred expenses shall be taken into account in computing the adjusted basis of the mine or deposit, except that such amount, and the adjustments to basis provided in section 1016(a) (9), shall be disregarded in determining the adjusted basis of the property for the purpose of computing a deduction for depletion under section 611.

§ 1.616-1 Development expenditures.

(a) General rule. Section 616 prescribes rules for treating expenditures paid or incurred during the taxable year by the taxpayer for the development of a mine or other natural deposit (other than an oil or gas well). Development expenditures under section 616 are those

which are made after such time when, in consideration of all the facts and circumstances (including actions of the taxpayer), deposits of ore or other mineral are shown to exist in sufficient quantity and quality to reasonably justify commercial exploitation by the taxpayer. Under section 616(a), a taxpayer is allowed a deduction for development expenditures whether or not such expenditures are made in the development or production stage of the mine or other natural deposit. Under section 616(b), the taxpayer may elect to defer development expenditures made in the development or producing stage and to deduct such expenditures ratably as the minerals or ores benefited are sold. While the mine or other natural deposit is in the development stage, the election applies only to that portion of the development expenditures which is in excess of net receipts from the mine or other natural deposit. See § 1.616-2 for rules with respect to the election to defer. It is not necessary that the taxpayer incur the development costs directly. He may engage a contractor to make the expenditures on his behalf.

(b) Expenditures to which section 616 is not applicable. (1) Section 616 is not applicable to development expenditures which are deductible for the taxable year under any other provision of the internal revenue laws.

(2) Section 616 is not applicable to expenditures which are reflected in improvements subject to allowances for depreciation under sections 167 and 611. However, allowance for depreciation of such improvements which are used in the development of ores or minerals are considered development expenditures under section 616. If such improvements are used only in part for development during a taxable year, an allocable portion of the allowance for depreciation shall be treated as a development expenditure.

(3) Section 616 is applicable to development expenditures paid or incurred by a taxpayer in connection with the acquisition of a fractional share of the working or operating interest to the extent of the fractional interest so acquired. The expenditure attributable to the remaining fractional share shall be considered as part of the cost of his acquired interest and shall be capitalized and recovered through depletion allowances. For example, taxpayer A owns mineral leases on undeveloped mineral lands. A agrees to convey an undivided three-fourths ($\frac{3}{4}$) interest in such leases to B, provided B will pay all of the expenditures incurred during the development stage of the deposits on these leases. B may deduct three-fourths ($\frac{3}{4}$) of such amount under section 616, but shall treat one-fourth of such amount as part of the cost of this interest, recoverable through depletion.

(4) The provisions of section 616 do not apply to costs of development paid or incurred by a prior owner which are reflected in the amount which the taxpayer paid or incurred to acquire the property. Such provisions apply only to costs paid or incurred by the taxpayer for development undertaken directly or through contract by the taxpayer. See,

however, section 381(a) and 381(c) (10) for special rules with respect to deferred development expenditures in certain corporate acquisitions.

(c) *Mine or other natural deposit.* Section 616 has reference to expenditures made for the development of a mine or other natural deposit. Within an aggregated property, as that term is defined in section 614 (b) and (c), or within a single tract or parcel of land, there may be more than one mine or other natural deposit. Where a property, as determined under section 614, contains more than one mine or other natural deposit, the taxpayer may deduct under section 616(a) the development expenditures made with respect to one of such mines or deposits, and may defer under section 616(b) the development expenditures made with respect to another of such mines or deposits. Where there is more than one mine with respect to a single underlying deposit, the taxpayer may deduct under section 616(a) the development expenditures made with respect to one of such mines, and may defer under section 616(b) the development expenditures made with respect to another of such mines. The taxpayer must treat consistently all development expenditures with respect to each such mine or other natural deposit in a taxable year. The taxpayer must make a separate determination of the units of minerals or ores benefited in a mine or other natural deposit (regardless of the computation of the depletion allowance) in order that deferred expenditures with respect to such mine or deposit may be deducted on a ratable basis. See paragraph (f) of § 1.616-2.

§ 1.616-2 Election to defer.

(a) *General rule.* In lieu of taking a deduction under section 616(a), in the taxable year when the development expenditures are paid or incurred, a taxpayer may elect under section 616(b) to treat such expenditures with respect to each mine or other natural deposit as deferred expenses to be deducted ratably as the units of the produced ore or minerals benefited by such expenditures are sold. Section 616(b) is applicable to development expenditures paid or incurred both in the development and producing stage of the mine or other natural deposit. However, in the case of such expenditures made in the development stage, this election is applicable only to the excess of the amount of such expenditures over the net receipts from the ore or minerals from such mine or deposit received or accrued during the development stage and in the same taxable year as the expenditures were paid or incurred. Such development expenditures not in excess of such net receipts shall be subject to the provisions of section 616(a).

(b) *Producing stage; definition of.* The mine or other natural deposit will be considered to be in a producing stage when the major portion of the mineral production is obtained from workings other than those opened for the purpose of development, or when the principal activity of the mine or other natural deposit is the production of developed ores

or minerals rather than the development of additional ores or minerals for mining.

(c) *Expenditures made by the owner who retains a nonoperating interest.*

(1) A taxpayer who elects to defer development expenditures and thereafter transfers his interest in the mine or other natural deposit, retaining an economic interest therein, shall deduct an amount attributable to such interest on a pro rata basis as the interest pays out. For example, a taxpayer who defers development expenditures and then leases his deposit, retaining a royalty interest therein, shall deduct the deferred expenditures ratably as he receives the royalties. If the taxpayer receives a bonus or advanced royalties in connection with the transfer of his interest, he shall deduct the deferred expenditures allocable to such bonus or advanced royalties in an amount which is in the same proportion to the total of such costs as the bonus or advanced royalties bears to the bonus and total royalties expected to be received. Also, in the case of a transfer of a mine or other natural deposit by a taxpayer who retains a production payment therein, he may deduct the development expenditures ratably over the payments expected to be received.

(2) Where a taxpayer receives an amount, in addition to retaining an economic interest, which amount is treated as from the sale or exchange of a capital asset or property treated under section 1231 (except coal to which section 631(c) applies), the deferred development expenditures shall be allocated between the interest sold and the interest retained in proportion to the fair market value of each interest as of the date of sale. The amount allocated to the interest sold may not be deducted, but shall be a part of the basis of such interest for the purpose of determining gain or loss upon the sale thereof.

(d) *Losses from abandonment.* Section 165 and the regulations thereunder contain general rules relating to the treatment of losses resulting from abandonment.

(e) *Effect of election.* (1) The election to defer development expenditures shall apply only to expenditures for the taxable year for which made. However, once made, the election shall be binding with respect to the expenditures for that taxable year. Thus, a taxpayer cannot revoke his election for any reason whatsoever.

(2) The election shall be made for each mine or other natural deposit by a clear indication on the return or by a statement filed with the district director with whom the return was filed, not later than the time prescribed by law for filing such return (including extensions thereof) for the taxable year to which such election is applicable.

(f) *Computation of amount of deduction.* The amount of the deduction allowable during the taxable year is an amount A, which bears the same ratio to B (the total deferred development expenditures for a particular mine or other natural deposit reduced by the amount of such expenditures deducted in prior taxable years) as C (the number of units

of the ore or mineral benefited by such expenditures sold during the taxable year) bears to D (the number of units of ore or mineral benefited by such expenditures remaining as of the taxable year). For the purposes of this proportion, the "number of units of ore or mineral benefited by such expenditures remaining as of the taxable year" is the number of units of ore or mineral benefited by the deferred development expenditures remaining at the end of the year to be recovered from the mine or other natural deposit (including units benefited by such expenditures recovered but not sold) plus the number of units benefited by such expenditures sold within the taxable year. The principles outlined in § 1.611-2 are applicable in estimating the number of units remaining as of the taxable year and the number of units sold during the taxable year. The estimate is subject to revision in accordance with that section in the event it is ascertained, from any source, such as operations or development work, that the remaining units are materially greater or less than the number of units remaining from a prior estimate.

§ 1.616-3 Time for making election with respect to returns due on or before the first day of the first month which begins more than 90 days after the regulations are published.

In the case of any taxable year beginning after December 31, 1953, and ending after August 16, 1954, the income tax return for which is due not later than the first day of the first month which begins more than 90 days after regulations adopted under section 616 are published in the FEDERAL REGISTER, the time to deduct or defer development expenditures for such a year under section 616 (a) or (b) shall expire on the first day of such month.

EXCLUSIONS FROM GROSS INCOME

§ 1.621 Statutory provisions; payments to encourage exploration, development, and mining for defense purposes.

Sec. 621. *Payments to encourage exploration, development, and mining for defense purposes.* There shall not be included in gross income any amount paid to a taxpayer by the United States (or any agency or instrumentality thereof), whether by grant or loan, and whether or not repayable, for the encouragement of exploration, development, or mining of critical and strategic minerals or metals pursuant to or in connection with any undertaking approved by the United States (or any of its agencies or instrumentalities) and for which an accounting is made or required to be made to an appropriate governmental agency, or any forgiveness or discharge of any part of such amount. Any expenditures (other than expenditures made after the repayment of such grant or loan) attributable to such grant or loan shall not be deductible by the taxpayer as an expense nor increase the basis of the taxpayer's property either for determining gain or loss on sale, exchange, or other disposition or for computing depletion or depreciation, but on the repayment of any portion of any such grant or loan which has been expended in accordance with the terms thereof such deductions and such increases in basis shall to the extent of such repayment be allowed as if made at the time of such repayment.

§ 1.621-1 Payments to encourage exploration, development, and mining for defense purposes.

(a) *General rule.* (1) Under section 621, a taxpayer shall exclude from gross income amounts which are paid to him:

(i) By the United States or by an agency or instrumentality of the United States,

(ii) As a grant, gift, bounty, bonus, premium, incentive, subsidy, loan, or advance,

(iii) For the encouragement of exploration for, or development or mining of, a critical and strategic mineral or metal,

(iv) Pursuant to or in connection with an undertaking by the taxpayer to explore for, or develop or produce, such mineral or metal and to expend or use any amounts so received for the purpose and in accordance with the terms and conditions upon which such amounts are paid, which undertaking has been approved by the United States or by an agency or instrumentality of the United States, and

(v) For which the taxpayer has accounted, or is required to account, to an appropriate agency of the United States Government for the expenditure or use thereof for the purpose and in accordance with the terms and conditions upon which such amounts are paid.

In order for section 621 to apply, such amount must qualify under each of the foregoing subdivisions. Under section 621, there shall also be excluded from gross income any income attributable to the forgiveness or discharge of any indebtedness arising from amounts to which such section applies.

(2) Section 621 is applicable whether or not the payee is obligated to repay to the United States any portion or all of the amount so received. However, such section is not applicable to any loan or advance for the repayment of which the borrower's liability is unconditional and legally enforceable.

(3) Except as provided in paragraph (d) of this section any expenditure attributable to an amount received by a taxpayer to which section 621 applies shall not be deductible by the taxpayer as an expense under subtitle A of the Internal Revenue Code of 1954, nor shall any such expenditure increase the basis of the taxpayer's property either for determining gain or loss on sale, exchange, or other disposition, or for computing depletion or depreciation (including amortization under section 168).

(b) *Allowance as part of purchase price.* (1) Section 621 is not applicable to any part of the purchase price of a critical and strategic mineral or metal which amount is received, whether before, on, or after delivery from the United States or any agency or instrumentality thereof, and irrespective of whether such purchase price is below, at, or above the currently prevailing market price.

(2) However, a payment of a separate and specific amount for the encouragement of exploration for, or development

or mining of, a critical and strategic mineral or metal shall not be considered to be a part of the purchase price of such mineral or metal merely because such payment is added to, or included with, the payment of such purchase price.

(c) *Payments for expenditures previously deducted or capitalized.* (1) Where amounts described in section 621 and this section are paid to a taxpayer in reimbursement for expenditures previously allowed as a deduction, the taxpayer shall include in gross income that portion of such amounts which is equivalent to the deduction for such expenditures allowed to the taxpayer and which deduction resulted in a reduction for any taxable year of the taxpayer's taxes under subtitle A of the Internal Revenue Code of 1954 (other than chapter 2, relating to tax on self-employment income), or prior income, war-profits, or excess-profits tax laws.

(2) Where amounts described in section 621 and this section are paid to the taxpayer in reimbursement for expenditures which have been deferred under sections 615 and 616 (relating to exploration and development expenditures) the taxpayer shall include in gross income that portion of such amounts which is equivalent to any deduction for such expenditures allowed to the taxpayer and which deduction resulted in a reduction for any taxable year of the taxpayer's taxes under subtitle A of the Internal Revenue Code of 1954 (other than chapter 2, relating to tax on self-employment income), or prior income, war-profits, or excess-profits tax laws. The portion of such amounts, equivalent to expenditures which are reflected in the adjusted basis of the assets to which charged, shall be excluded from gross income, and such adjusted basis shall be decreased by the amount of such exclusion.

(3) Where amounts described in section 621 and this section are paid to the taxpayer in reimbursement for expenditures which have been charged to capital account (either to a depletable or depreciable account), there shall be included in the taxpayer's gross income that portion of such amounts which is equivalent to such capital expenditures that have been recovered through cost depletion or depreciation deductions and which deductions have resulted in a reduction of the taxpayer's taxes for any taxable year under subtitle A of the Internal Revenue Code of 1954 (other than chapter 2, relating to tax on self-employment income), or prior income, war-profits, or excess-profits tax laws. The portion of such amounts which is equivalent to the expenditures which are reflected in the adjusted basis of the asset to which charged shall be excluded from gross income. The adjusted basis of such assets shall be reduced by the amount of such exclusion from gross income.

(4) Where amounts described in section 621 and this section are paid to the taxpayer in reimbursement for expenditures which have been charged to a de-

pletable capital account, such amounts shall be excluded to the extent such expenditures are recovered through depletion deductions computed under section 613 (relating to percentage depletion).

(5) The amount of reimbursed expenditures charged to an account (depletable or depreciable) and recovered through depletion or depreciation deductions for any taxable year shall be that proportion of the total deductions allowed with respect to such account that such reimbursed expenditures bear to the total amount in the account. For example, in 1956 A incurs exploration expenditures of \$12,000 which he charges to a depletable capital account. This brings the total amount in this account to \$36,000 which is the adjusted basis of the property on January 1, 1957. In 1957, A is allowed a deduction for cost depletion of \$9,000 which resulted in a reduction of A's income taxes. One-third of this deduction is attributable to the \$12,000 of exploration expenditures since they were a third of the total in the capital account on January 1, 1957. Therefore, on January 1, 1958, these exploration expenditures make up \$9,000 of the remaining \$27,000 in the account. If on January 1, 1958, A receives \$12,000, which qualifies under section 621, in reimbursement for these exploration expenditures, he must report \$3,000 as income and reduce the capital account by \$9,000.

(d) *Definition.* As used in section 621 and this section, the term "critical and strategic minerals or metals" means minerals and metals which are considered by those departments, agencies, and instrumentalities of the United States charged with the encouragement of exploration for, and development and mining of, critical and strategic minerals and metals, to constitute critical and strategic minerals and metals for defense purposes. See, for example, section 7 of Order-1 of the Defense Minerals Exploration Administration, as amended March 23, 1954, 19 F.R. 1563.

(e) *Repayments of amounts excluded under section 621.* Upon the repayment by the taxpayer of any portion of any amount to which section 621 applies and which portion has been expended for the purpose and in accordance with the terms and conditions upon which it was paid to the taxpayer, any expenditures attributable to such amount made by the taxpayer shall be treated as if such expenditures had been made at the time of such repayment. Such expenditures shall to the extent of the repayment be expensed or capitalized, as the case may be, in the order in which they were actually made or in such other manner as may be adopted by the taxpayer with the approval of the Commissioner.

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

Approved: January 18, 1960.

FRED C. SRIENER, Jr.,
Acting Secretary of the Treasury.

[F.R. Doc. 60-612; Filed, Jan. 20, 1960;
8:56 a.m.]

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

SUBCHAPTER B—STATEMENTS OF GENERAL POLICY OR INTERPRETATION NOT DIRECTLY RELATED TO REGULATIONS

PART 779—RETAIL OR SERVICE ESTABLISHMENT AND RELATED EXEMPTION

Application of Exemption to Liquefied-Petroleum-Gas Dealers

Correction

On December 24, 1959, the addition of § 779.38 as an amendment to 29 CFR Part 779 was published in the *FEDERAL REGISTER* (24 F.R. 10676).

Due to inadvertence, a portion of § 779.38(f) as earlier proposed and published on October 10, 1957, in the *FEDERAL REGISTER* (22 F.R. 8068), was omitted. This editorial amendment furnishes the omitted words and comports the amendment to the proposal as per the original intent.

Accordingly, pursuant to section 3 of the Administrative Procedure Act (5 U.S.C. 1002), and under the authority cited in the said amendment, 29 CFR Part 779, § 779.38(f), is hereby amended to read as follows:

(f) If more than 50 percent of the retail or service establishment's annual dollar volume of sales of goods or services is made within the state in which the establishment is located and if 75 percent or more of the annual dollar volume of sales of the establishment consists of sales of goods or services, or both, which are not for resale and are recognized as retail sales or services in the industry as herein set forth, the exemption under section 13(a)(2) will apply to all employees employed by the establishment.

Signed at Washington, D.C., this 14th day of January 1960.

CLARENCE T. LUNDQUIST,
Administrator.

[F.R. Doc. 60-593; Filed, Jan. 20, 1960; 8:51 a.m.]

Title 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

SUBCHAPTER C—MILITARY PERSONNEL

PART 56—MEDICAL CARE FOR DEPENDENTS OF MEMBERS OF THE UNIFORMED SERVICES

Miscellaneous Amendments

The following miscellaneous amendments to this Part 56 have been authorized by the Secretary of Defense and the Secretary of Health, Education, and Welfare: In conformance with the revised definition of "The United States" in § 56.1-3(g) to mean "all the United States and the District of Columbia", wherever the expressions "continental limits of the United States", "continental

United States", or "continental United States, Alaska, Hawaii, and Puerto Rico", have been used in §§ 56.3-2 (in the title), 56.3-2(e), 56.4-4(c), 56.4-5(a)(3), 56.5-7(a), 56.5-7(b), 56.5-7(c) (in the title), and 56.5-7(c)(1), those sections shall be amended by striking the words "continental", "continental limits of the", "Alaska", and "Hawaii" wherever they appear.

1. In Section 56.1-3(g), the definition of "The United States" has been revised to read as follows:

(g) "The United States" means all of the States and the District of Columbia.

2. In Section 56.1-3(j)(2), the words "locations such as" have been inserted. Section 56.1-3(j)(2), as amended, now reads as follows: (2) *Outpatient care.* The medical services which are normally performed in locations such as the home, a physician's office, or the outpatient department of a hospital, clinic, or dispensary.

3. In § 56.3-2(b), the cross references have been changed. Section 56.3-2(b), with changes, now reads as follows:

(b) Outpatient medical care at Government expense for dependents eligible for civilian medical care is not authorized from civilian sources, except that certain specified treatment for such dependents who are not hospitalized, will be authorized when in accordance with § 56.5-2(f); 56.5-3(d)(1), (2), and (3); or § 56.5-6(i).

4. Section 56.3-3(a)(3) has been added to read as follows:

(3) When an eligible dependent wife, whose husband dies while on active duty, is pregnant at the time of his death. (See § 56.5-5(e)).

5. The third word "acute" has been deleted and a cross reference has been added to § 56.5-2(b). Section 56.5-2(b), as amended, now reads as follows:

(b) Treatment of surgical conditions only during hospitalization except as otherwise provided in this Directive. (See § 56.5-4(c)).

6. Section 56.5-2(g) has been revised to read as follows:

(g) Treatment in a hospital for an acute emotional disorder is authorized provided that such disorder is considered to constitute an emergency which is a threat to the life or health of a patient. In general, care will be provided for an acute emotional disorder under this Section only until the disorder subsides, until arrangements are made for care elsewhere, or until the end of 21 days of hospitalization, whichever occurs earliest. Under procedures to be established by the Executive Agent, or his representative, within the United States and Puerto Rico, and by the Secretaries of the uniformed services, or their representatives, outside the United States and Puerto Rico, extension beyond 21 days may be granted on a case-by-case basis where the member or the dependent, or the representative of either, shows that, due to absence (e.g. overseas assignment when dependent is in the United States), the member was

unable to make arrangements for care elsewhere within the 21-day period. With special exceptions, as authorized by the Surgeon General of a uniformed service, additional care for an acute emotional disorder in a hospital of the uniformed services on a space available basis may be provided in accordance with § 56.4-4(b). The commanding officer of a uniformed services hospital, or the Surgeon General of a uniformed service having jurisdiction over a hospital, may authorize transfer of any patient, hospitalized in a civilian hospital under any of the above subparagraphs, to that uniformed services medical facility on the basis of space, facility, and personnel availability. (See §§ 56.4-2 and 56.4-3). In cases covered by the two preceding sentences, transfer to a uniformed service hospital at Government expense is authorized.

7. Section 56.5-3(d)(1)(v) has been added to read as follows:

(v) Although the Dependents' Medical Care Act provides primarily for professional services during hospitalization and does not permit medical care normally considered to be outpatient care at Government expense, certain limited benefits are authorized as indicated elsewhere in this section and below:

(a) Payment is authorized in an amount not to exceed \$75.00 at Government expense for necessary diagnostic tests and procedures performed or authorized by the attending physician prior to hospitalization for the same bodily injury or surgical procedure for which hospitalized.

(b) Payment is authorized in an amount not to exceed \$50.00 at Government expense for necessary tests and procedures performed or authorized by the attending physician for proper aftercare of the same bodily injury or surgical procedure for which hospitalized.

(c) The monetary limitations in (a) and (b) of this subdivision are intended only to define the liability of the Government under the stated conditions and in no way modify, alter, or affect the fees for individual procedures contained in the local schedules of allowances; and also, they do not restrict the physician in the performance or authorization of necessary tests or procedures.

(d) The monetary limitations in (a) and (b) of this subdivision may be exceeded only in special and extraordinary cases provided that the physician authorizing the tests and procedures, for which charges exceed the amounts specified above, submits a special report which shall be reviewed by a contractor's physician review board. This board will make appropriate recommendations to the Executive Agent who may authorize such additional payments.

8. Section 56.5-3(d)(2)(iv) has been added to read as follows:

(iv) Under procedures established by the Executive Agent, or his representative, within the United States and Puerto Rico, and by the Secretaries of the uniformed services, or their representatives, outside the United States and Puerto Rico, required in-hospital care

can be furnished to obstetrical and maternity patients who develop acute emotional disorders complicating pregnancy or constituting postpartum psychosis occurring within the six weeks postpartum period authorized for maternity care.

9. Section 56.5-3(d)(3) has been added to read as follows:

(3) *Other professional services.* The authorized payments for the treatment of bodily injuries when a patient is not hospitalized, including diagnostic and therapeutic tests and procedures authorized by the attending physician, are limited to treatment of fractures, dislocations, lacerations, and other wounds as prescribed in the local schedules of allowances. Treatment of fractures, dislocations, lacerations, and other wounds that are legitimately cared for by dentists, including related diagnostic and therapeutic tests and procedures authorized by the attending dentist, may also be paid for hereunder. (See § 56.5-6 (i)).

10. Section 56.5-4(b) has been revised to read as follows:

(b) Nervous and mental disorders (see § 56.1-3(j)(6)), including acute emotional disorders except that (1) care of this type may be furnished to a dependent requiring same during the period of hospitalization of that dependent for a condition that does qualify as authorized care under § 56.5-2 (a) through (f); (2) care for acute emotional disorders may be furnished in connection with obstetrical and maternity services in accordance with § 56.5-3 (d)(2)(iv); and (3) care for acute emotional disorders may be furnished in accordance with § 56.5-2(g).

11. Section 56.5-4(c) has been revised to read as follows:

(c) Services of a surgical nature desired or requested by the patient which are not medically indicated. The opinion of the cognizant medical authority (charge physician) will determine whether the services are medically indicated and therefore payable under this Directive, except that the types of surgery described in subparagraph (1) of this section are not authorized for payment under this Directive under any circumstances; and the types of surgery described in subparagraph (2) of this section are authorized only under the conditions stipulated therein.

(1) *Examples of types of surgical care not authorized.* (i) Cosmetic surgery—any surgery for improvement or change of appearance or for psychological reasons.

(ii) Ears—reconstruction and/or revision of the external ear; surgery based on psychological reasons.

(iii) Congenital defects of skeletal and/or central nervous system which are readily identifiable as representing chronic long-term conditions and characteristically respond poorly to surgical intervention.

(iv) Sterilization procedures for multiparity, socioeconomic and/or psychological reasons.

(v) Procedures designed to correct a state of infertility or sterility.

(vi) Removal of tattoos.

(2) *Examples of types of inpatient surgical care authorized for payment only if certain conditions prevail.* (i) Ears—surgery for restoration or improvement of hearing is allowable.

(ii) Eyes—surgery for glaucoma, cataracts, strabismus (squint) or other conditions to aid or improve vision of the affected eye(s) is allowable.

(iii) Harelip and/or cleft palate—surgery for initial repairs, including surgery for subsequent repair known and established as a requirement at the time of original surgery is authorized. Subsequent revisions are not authorized.

(iv) Rhinoplasties—authorized only for improvement of nasal respiratory physiology.

(v) Skeletal defects (e.g. club foot, congenital dislocated hip)—surgical treatment is authorized only when treatment is required as an "in-hospital" patient to improve function. Care normally provided on an out-patient basis and not requiring hospitalization is not authorized.

(vi) Surgical treatment for removal of supernumerary digits or for correction of syndactylism is authorized only for improvement of function.

(vii) Scars—surgical treatment is authorized only when a scar is ulcerated, shows clinical evidence of malignancy, or when a contracture impairing anatomical function is present.

(viii) Surgical treatment for removal of nevi, hemangiomas and/or telangiectatic lesions is authorized only if they are bleeding, ulcerated, painful, or show clinical evidence of malignancy, or if size and location produce functional impairment.

(ix) Surgical treatment for removal of planter warts, verrucae, sebaceous cysts, condylomata or moles is authorized only if they are bleeding, ulcerated, painful, or show clinical evidence of malignancy, or if size and location produce functional impairment.

(x) Mammoplasty is authorized only when severe pain or marked disability is present.

(xi) Tubal ligation or other sterilization procedures—surgical procedure is authorized only when, in the opinion of the charge physician and consulting physician(s), the procedure is a necessary requirement in the proper medical management of an otherwise unrelated medical or surgical condition for which treatment is authorized under this part.

12. Section 56.5-4(d) has been added to read as follows; redesignate present (d), (e), and (f) as (e), (f), and (g).

(d) Non-acute medical conditions (see § 56.5-2(a)). Examples of types of care not authorized are set forth below:

(1) Procedures designed to determine state of infertility or sterility.

(2) Pseudocyesis (false pregnancy) or pregnancy suspected but not proven.

(3) Tests to determine pregnancy, except when patient is in fact pregnant and when tests are required for proper conduct of maternity or postpartum care (hydatid mole).

(4) Diagnostic evaluation and hospital admissions in connection therewith when patients are not acutely ill or when diagnostic surveys are not followed by surgery.

(5) Rehabilitation procedures for persons with congenital defects, cerebral palsy, or poliomyelitis (except when related to "in-hospital" care of surgical procedure performed for improvement or restoration of function).

(6) Treatment for tuberculosis—inactive (non-acute) when determined by clinical tests. Treatment is authorized only for the active (acute) phase as determined by acceptable medical standards (positive sputa; positive gastric washings; or positive chest or other X-rays).

(7) Tests and procedures such as the following:

(i) Psychological, psychometric, or intelligence measuring tests.

(ii) Speech and/or hearing therapy, remedial reading, or orthoptic training.

(iii) Child guidance therapy.

13. Section 56.5-5(c) has been revised to use the words "Medicare Permit" or "permit" instead of the words "certificate" or "Certificate of Authorization". Section 56.5-5(c), as amended, now reads as follows:

(c) On and after the effective date specified by the Secretary of Defense pursuant to § 56.3-2(c), an eligible dependent who is residing with the sponsor, or in the area to which the sponsor is assigned, and who has not commenced receiving care from civilian sources prior to that date (or, in the case of a maternity patient, whose care from her civilian physician on that date has not reached the second trimester), in addition to complying with paragraphs (a) and (b) of this section, will be required to present a Medicare Permit to the attending physician and the hospital, when both are involved, and to the appropriate party when only one is involved, for attachment to the claim form. Sources of civilian care other than the hospital or the attending physician may, in lieu of attaching a permit to the claim form, accept a statement from the person signing the certification in accordance with paragraph (a) of this section that a permit has been furnished to the attending physician (identifying him by name) or to the hospital (identifying it by name). The permit shall be obtained from uniformed services installations and shall cover only care authorized to be obtained from civilian sources under this Directive. A statement by the person signing the certification in accordance with paragraph (a) of this section that the patient is not residing with the sponsor, or in the area to which the sponsor is assigned, may be accepted by the source of care unless that source has actual knowledge to the contrary. The requirement for the permit shall be waived in the case of an emergency, and in other circumstances outlined in § 56.3-3. A statement from the attending physician on the claim form that the case is an emergency (see § 56.3-3 (a)(1)) will be sufficient to justify an exception. Also, a statement by the

person signing the certification in accordance with paragraph (a) of this section that the patient is away on a trip from the area to which the sponsor is assigned will be sufficient to justify an exception, unless the source of care has actual knowledge to the contrary. Where representations are made by the source of civilian medical care that it was not aware of the requirements contained in this paragraph (c) and that it furnished care authorized under this part to a person claiming to be a spouse or child eligible for civilian medical care, and possessing a valid DD Form 1173, then the matter will be brought to the attention of the uniformed service concerned for determination whether a Medicare Permit can be issued. If it is determined by the uniformed service concerned that the permit cannot be furnished, then the matter will be brought to the attention of the member concerned as an unpaid debt. In special circumstances, and where the source of civilian care shows that collection has not been possible, then the Executive Agent or his designee may authorize payment to be made to that source, provided the claim covers care authorized under this part and was otherwise executed in accordance with all requirements except those set forth above concerning the Medicare Permit.

14. Section 56.5-5(e) has been revised to read as follows:

(e) Exceptions to the policy in § 56.5-5(d) are authorized under the following circumstances:

(1) Spouses and children of members of the uniformed services receiving treatment in a civilian medical facility at Government expense at the time of death of a member, or such spouses and children requiring care in a civilian facility as a result of being in the same accident or the same episode which proved fatal to the member, if continued hospitalization is required, shall be transferred to a uniformed services medical facility as soon as the physical condition of the patient permits, subject to space, facilities, and personnel availability. If such a transfer is made, it will be accomplished at Government expense. The cost of medical and hospital care authorized from civilian sources (see § 56.5-2) which was furnished to the dependent during the period of hospitalization in the civilian facility shall be borne by the Government subject to the charges provided in § 56.5-6, but not after the date on which feasible arrangements for transfer have been made.

(2) Additionally, a dependent wife who is eligible for civilian medical care (see § 56.1-3(e)), whose husband dies while on active duty, who is pregnant at the time of his death and is delivered on or after July 28, 1959, may be provided from civilian sources at Government expense the obstetrical and maternity care authorized under this Directive to include, where applicable, prenatal care, delivery, and postpartum care. Neonatal care authorized elsewhere in this Directive is authorized for a child born under these circumstances. Care authorized in this subparagraph includes authorized prenatal care obtained before, on, or after July 28, 1959 and authorized post-

partum care for the child. The restrictions on freedom of choice described in § 56.3-2 shall not apply to dependents covered in this § 56.5-5(e) (2).

15. Section 56.5-6(i) has been added to read as follows:

(i) When a patient is treated for injury other than as an inpatient in a hospital in accordance with § 56.5-3(d) (3), the payments made shall be in accordance with the local schedules of allowances. Payments not to exceed a maximum of \$75.00, except as provided for under § 56.5-3(d) (1) (v) (d), are also authorized for laboratory tests, pathology and radiology examinations provided they are procedures performed by or authorized by the attending physician or surgeon. Payment of charges is also authorized for use of hospital outpatient facilities required for the treatment of the injury, e.g., a cast room. The patient shall pay the first \$15.00 of the physician's charges for each different cause or accident for which treatment and services are rendered, except that multiple injuries to the same person resulting from a single accident shall be considered as one injury for payment of the maximum required fee (\$15.00) by the patient. The Government shall pay for all costs in excess of \$15.00 as authorized in the local schedules of allowances. However, payment by the Government for laboratory tests and pathology and radiology examinations shall not exceed the \$75.00 maximum except as provided for under § 56.5-3(d) (1) (v) (d).

16. Section 56.5-10 has been added to read as follows:

§ 56.5-10 Administration of changes to this part effective 1 January 1960.

(a) The changes to this part made effective on January 1, 1960 (referred to in this § 56.5-10 as the "effective date") restored certain types of care to the Medicare Program. On and after that date certain additional treatment specified in those changes constitutes authorized care which was not authorized on the preceding day. That additional treatment is referred to generally in this § 56.5-10 as care of a type restored to the Program. The following rules are promulgated governing administration of treatment of certain patients who commenced receiving that type of care before the effective date.

(1) *Hospitalized patients.* Where a patient is admitted to a hospital before the effective date for a type of care restored to the Program and is still in the hospital on that date receiving that care, payment may be made to the sources furnishing that care for the current uninterrupted period of hospitalization. Where a period of hospitalization commencing prior to that day is payable, then payment for pre- and post-hospitalization diagnostic tests and procedures which were considered necessary by the attending physician or dentist and were performed by or authorized by him are payable in accordance with § 56.5-3(d) (1) (v).

(2) *Outpatient injury cases.* Section 56.5-3(d) (3) covers care of this type that has been restored to the Program. Pay-

ment is authorized for care covered by that section furnished to a patient by an authorized civilian source only in those cases where the injury occurred prior to the effective date but subsequent to December 1, 1959 and where the patient is still under the care of a physician on or after the effective date, for the same injury, from the date of commencement of care. Payment is also authorized, in cases covered by the preceding sentence, for necessary laboratory tests, pathology and radiology examinations if the procedures are performed by or authorized by the attending physician or dentist (see §§ 56.5-3(d) (3) and 56.5-6(i)).

(b) Nothing in this § 56.5-10 shall waive the restrictions on freedom of choice set forth in § 56.3-2(e) nor the requirement for payment by the patient of the charges specified in § 56.5-6.

MAURICE W. ROCHE,
Administrative Secretary.

Approved: January 14, 1960.

FRANK B. BERRY,
Assistant Secretary of Defense
(Health and Medical).

Approved: January 6, 1960.

ARTHUR S. FLEMMING,
Secretary of Health, Education,
and Welfare.

[F.R. Doc. 60-608; Filed Jan. 20, 1960;
8:55 a.m.]

Title 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 43—MAIL DEPOSIT AND COLLECTION

Location and Arrangement of Mail Chutes

Federal Register document 59-9841, published at page 9371 of the FEDERAL REGISTER of November 20, 1959, gave notice of the proposal by the Post Office Department to amend the regulations regarding the location and arrangement of mail chutes. Interested persons were given 30 days in which to submit written comments with respect to the proposed regulations.

No comments have been received by the Department with respect to the proposed amendment.

Accordingly, the amendment is adopted without change. As so adopted, the amendment reads as follows:

In § 43.6 *Mail chutes and receiving boxes*, subdivision (i) of paragraph (c) (5) is amended to read as follows:

(i) The chute must be so placed as to be conveniently accessible throughout the entire length. When more than 5 lineal feet of the mail chute will be concealed, removable panels must be provided in the concealing features to permit easy access to the chute for removal of blockades. The concealed equipment should be so manufactured and installed that it can be removed readily if necessary. In no case shall the chutes be placed behind elevator screens or partitions or run through any part of a building to which the public is denied

access without prior approval of the Regional Operations Director.

NOTE: The corresponding Postal Manual section is 153.635a.

(R.S. 161, as amended, 396, as amended, sec. 1, 24 Stat. 569, as amended; 5 U.S.C. 22, 369, 39 U.S.C. 156)

[SEAL] HERBERT B. WARBURTON,
General Counsel.

[F.R. Doc. 60-594; Filed, Jan. 20, 1960;
8:52 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER I—MINERAL LANDS

[Circular 2034]

PART 70—MINERAL LANDS; COAL PERMITS AND LEASES AND LICENSES FOR FREE USE OF COAL

PART 71—MINERAL LANDS; OIL AND GAS, PHOSPHATE AND OIL SHALE LEASES, AND POTASH AND SODIUM PERMITS AND LEASES

PART 191—GENERAL REGULATIONS APPLICABLE TO MINERAL PERMITS, LEASES, AND LICENSES

PART 193—COAL LEASES, PERMITS, AND LICENSES

PART 200—MINERAL DEPOSITS IN ACQUIRED LANDS AND UNDER RIGHTS-OF-WAY

Miscellaneous Amendments

The following revocations and amendments are necessary to implement (1) that part of section 6(k) of the act of July 7, 1958 (Public Law 85-508, 72 Stat. 339), which repealed section 1 of the act of March 4, 1915 (38 Stat. 1214), as amended (48 U.S.C. 353), and (2) the act of September 9, 1959 (Public Law 86-252, 73 Stat. 490). The latter act repealed the act of October 20, 1914 (38 Stat. 741), as amended (48 U.S.C. 432-452), and amended the first sentence of section 2 of the act of February 25, 1920 (41 Stat. 438), as amended (30 U.S.C. 201), by deleting the words "outside of the Territory of Alaska."

It is the policy of the Department of the Interior whenever practicable, to afford the public an opportunity to participate in the rule making process. However, that practice is not being followed with respect to the amendment of these regulations, since the changes therein are merely reflective of changes made by legislation. These amended regulations become effective at the beginning of the calendar day on which they are published in the **FEDERAL REGISTER**.

The revocations and amendments are as follows:

1. Parts 70 and 71 are revoked.
2. The footnote to § 191.1 is deleted.

3. The Cross Reference footnote which appears after the table of contents to Part 193 is deleted.

4. Paragraph (a) of § 193.1 is amended to read as follows:

§ 193.1 Statutory authority.

(a) Divide into leasing units and award leases of coal lands and coal deposits owned by the United States.

5. § 193.5 is amended to read as follows:

§ 193.5 Permits, leases and licenses for lands disposed of with reservation of coal.

Where lands included in a permit, lease or license have been or may be disposed of with reservation of the coal deposits, a permittee, lessee or licensee must make full compliance with the law under which such reservation was made. See the acts of March 3, 1909 (35 Stat. 844; 30 U.S.C. 81); June 22, 1910 (36 Stat. 583; 30 U.S.C. 83-85), December 29, 1916 (39 Stat. 862; 43 U.S.C. 291-301); June 17, 1949 (63 Stat. 200); June 21, 1949 (63 Stat. 214; 30 U.S.C. 54); March 8, 1922 (42 Stat. 415; 48 U.S.C. 377), and other laws authorizing such reservation.

6. § 193.22 is amended to read as follows:

§ 193.22 Permit bond.

The applicant must furnish a corporate surety bond on Form 4-1130 or his personal bond on Form 4-1131 conditioned upon compliance with all the terms of the prospecting permit. The bond shall be in the sum of \$500 except where the lands applied for have been entered or patented with the coal reserved to the United States pursuant to the act of June 22, 1910 (36 Stat. 583; 30 U.S.C. 83-85) or the act of March 8, 1922 (42 Stat. 415; 48 U.S.C. 377), in which event, a bond on the same form in the sum of \$1,000 will be required. Personal bonds must be accompanied by negotiable Federal securities in the amount of the bond. The bond may be filed with the application which will expedite action thereon, or within 30 days after receipt of notice by the applicant that the permit will be granted when the bond is filed. The permittee may, in lieu of a

bond of the two types specified above, submit one on Form 4-1130 with two qualified sureties as provided in § 191.13 of this chapter.

7. Paragraph (a) of § 200.1 is amended to read as follows:

§ 200.1 Purpose and authority.

(a) The Mineral Leasing Act for Acquired Lands, enacted on August 7, 1947 (61 Stat. 913; 30 U.S.C. 351-359), and referred to in this section and in §§ 200.2 through 200.10, as "the act," authorizes the Secretary of the Interior to issue permits and leases for deposits of oil, gas, oil shale, coal, phosphate, sodium and potassium in lands acquired by the United States subject to the same conditions as contained in the mineral leasing laws of February 25, 1920 (41 Stat. 437), as amended (30 U.S.C. 181-263), February 7, 1927 (44 Stat. 1057), as amended (30 U.S.C. 281-287), and in all laws which amend or supplement these mineral leasing laws. The act also authorizes the issuance of permits and leases for sulphur deposits in such acquired lands, wherever situated, subject to all other conditions contained in the act of April 17, 1926 (44 Stat. 301), as amended (30 U.S.C. 271-276).

8. § 200.4 is amended to read as follows:

§ 200.4 Other regulations applicable: Lease forms, applications, and offers.

Except as otherwise specifically provided in §§ 200.1 to 200.11, inclusive, the regulations prescribed under the mineral leasing laws, and contained in Parts 191 to 198, inclusive, of this chapter, shall govern the disposal and development of minerals under the act to the extent that they are not inconsistent with the provisions of the act. All present interest acquired lands oil and gas leases whether the Government's interest be full or fractional shall be issued on Form 4-1196. Future interest and fractional future interest leases shall be issued on Form 4-1097.

FRED A. SEATON,
Secretary of the Interior.

JANUARY 15, 1960.

[F.R. Doc. 60-587; Filed, Jan. 20, 1960;
8:50 a.m.]

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 954]

[Docket No. AO-153-A7]

MILK IN DULUTH-SUPERIOR MARKETING AREA

Decision on Proposed Amendments to Tentative Marketing Agreement and to Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.),

and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Duluth, Minnesota, on January 13-22, 1959, pursuant to notice thereof issued on January 21, 1958 (23 F.R. 482), November 17, 1958 (23 F.R. 9033), and December 4, 1958 (23 F.R. 9570).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Agricultural Marketing Service, on September 10, 1959 (24 F.R. 7409) filed with the Hearing Clerk, United States Department

of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

Preliminary statement. The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order, were formulated, was conducted at Duluth, Minnesota, on January 13-22, 1959, pursuant to notice thereof which was issued January 21, 1958 (23 F.R. 482), November 17, 1958 (23 F.R. 9033), and December 4, 1958 (23 F.R. 9510).

The material issues on the record of the hearing relate to:

1. Expansion of the marketing area;
2. Modification of the scope of regulation;
3. Changing the classification and allocation provisions;
4. Altering the level of the class prices;
5. Establishing provisions relative to unpriced milk;
6. Distribution of proceeds to producers; and
7. Administrative changes.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. **Marketing area.** The Duluth-Superior marketing area should be expanded to include all of Carlton County, Minnesota, and Ashland, Bayfield, and Douglas Counties, Wisconsin.

The present marketing area, which comprises the cities of Duluth and Cloquet, Minnesota, and Superior, Wisconsin, has not been expanded since the inception of Order No. 54 in May 1941. Since that time regulated handlers' fluid sales have increased considerably in the four counties herein recommended for inclusion in the marketing area. Presently regulated handlers distribute all the fluid milk sold in Carlton County, Minnesota. In the three Wisconsin counties they distribute the major portion of the fluid milk sold therein. Only two local handlers, who are not subject to any Federal order, would become subject to regulation in these three counties and one of them apparently operates as a producer-handler. The three-county territory includes the major portion of the sales territories of the presently regulated and local handlers while, at the same time, it involves distant handlers, whose primary outlets are outside this market, to only a minimum extent.

In the four counties to be included only Grade A milk is now being sold. In Carlton County, Minnesota, the Grade A milk is furnished by presently regulated handlers and meets the same standards as milk sold in Duluth, Superior, and Cloquet. In the three Wisconsin counties all milk distributed for fluid use must, as a minimum, conform to State Grade A standards. These standards are essentially comparable to those prevailing in the present marketing area and the pricing provisions of the order are equally applicable.

Extending the marketing area to include these four counties will promote orderly marketing by requiring the op-

erators of unregulated plants doing business in the counties to pay the specified minimum prices to producers for milk in accordance with its use. It will also assure patrons at such regulated plants accurate weights, tests, and market information.

At present, the unregulated operators have available to them substantial competitive advantages in the procurement of milk. One is that they may be able to purchase milk from dairymen at the Duluth blend price, but sell a larger proportion of it as Class I than is so utilized in Duluth. This can be a considerable advantage in view of the comparatively low proportion of producer milk sold in Class I in this market. The second advantage is that the prices paid for milk tend to be lower than at Duluth at points south of the city. In the nearby Wisconsin territory the Chicago blend prices, adjusted for location, are the dominant factor. They are substantially below the Duluth blends.

With respect to Carlton County, situated to the west of Duluth, the territory is served exclusively by regulated handlers. The growth of population and milk sales in this county, in which the presently regulated city of Cloquet is located, make it desirable that the entire county be included in the marketing area.

In the three Wisconsin counties of Ashland, Bayfield, and Douglas, situated to the south and east of Duluth and Superior, regulated handlers account for the predominant portion of the Class I business. In Ashland County the combined sales of presently regulated handlers represent more than 60 percent of the total volume of fluid sales. Almost all the remaining sales in this county are from plants regulated under other Federal orders. The remaining sales are from one plant which is located outside the area and which has about 2 percent of the sales in the county but which, on the basis of the evidence of record, would not qualify as a pool plant. Exemption from regulation for plants from which are shipped less than an average of 500 pounds per day is provided for in the pool plant definition and it appears that such exemption would apply to this plant.

In Bayfield County regulated handlers have about 85 percent of the fluid milk sales. Plants regulated under other orders have about 7 percent of the sales, and the remaining Class I distribution is by two local dealers, one a producer-dealer.

In Douglas County presently regulated handlers have more than 95 percent of the Class I business. The remaining Class I sales are made by a handler regulated under the Minneapolis-St. Paul order.

The other Wisconsin county proposed for inclusion, Sawyer County, should not be so included. Regulated handlers have substantially less than half the Class I sales in the county. The remaining fluid sales are accounted for by a local dairy, which has more than 80 percent of the sales in the largest town in the county, a plant regulated under another order, and three other unregulated plants whose

primary markets are cities south and east of Sawyer County. None of the operators of these presently unregulated plants relies upon Duluth pool plants for his supplemental milk supplies.

The other Minnesota territories to the north and northeast of Duluth which were proposed for inclusion in the marketing area should not be so included. The proposed area would involve International Falls, in Koochiching County near the Canadian border, several cities in Itasca County, and all of St. Louis, Lake, and Cook Counties.

International Falls should not be included in the expanded marketing area. A local dairy operator has more than 70 percent of the Class I business in and around the city. Only about 20 percent of the fluid sales are made by a regulated handler and the remaining 10 percent are from a distant, unregulated plant. Stable marketing conditions prevail in International Falls. Prices paid to local producers have compared favorably with Duluth blend prices and proponents did not make any case that the local plant had a cost advantage in purchasing milk. Seasonal surpluses are at a minimum. Moreover, local producers did not favor extending regulation to International Falls.

The remaining Minnesota municipalities and counties, the inclusion of which was proposed, should not be added to the marketing area because of the quantities of ungraded milk which are, and the much larger quantities of milk which could be, distributed throughout this territory. At the present time the Minnesota State law requires that all fluid milk labeled Grade A meet minimum statewide requirements. Local health departments have the power to set sanitary standards for market milk as long as their standards meet the State's minimum requirements.

The Minnesota "Iron Range" comprises a series of cities and towns, located in Itasca, St. Louis, and Lake Counties, which extend in a southwesterly to northeasterly direction from about 50 to 80 miles north of Duluth. Very few of the Range cities or towns require their supplies to be of Grade A quality and, therefore, a large potential market for non-Grade A milk is provided.

The order could be made applicable only to handlers of Grade A milk. However, this would place such handlers at a serious disadvantage in competing with lower cost milk from ungraded sources. Possible solutions of the non-Grade A milk problem which might be considered would involve either pricing non-Grade A milk at a specified differential below Grade A milk or pooling and pricing Grade A and non-Grade A milk separately. However, it would not be appropriate to consider the non-Grade A milk problem at this time inasmuch as handlers of such milk had no prior notice that ungraded milk would be a hearing issue and, as a consequence, had no specific reason for attending the hearing or preparing testimony. Although dairymen supplying some Iron Range distributors testified in support of an order, it is concluded for the above reasons that the Range cities and those other por-

tions of St. Louis, Lake, and Cook Counties, which are not presently under regulation but where the same general conditions prevail, should not be included in the marketing area at this time.

2. *Scope of regulation.* Technological advances in the dairy industry since the order was last amended make necessary substantial changes in the terms of the order. In 1950 the marketing area was limited to the three cities of Duluth, Superior, and Cloquet. The marketing area was served only by local handlers, and these handlers were supplied by producers with farms located at comparatively short distances from the market.

Improvements in roads, transportation equipment and refrigeration, the advent of the paper container, a trend towards increased store sales, and other factors have greatly broadened the supply and distribution territories of handlers. Milk is sold in the marketing area, as recommended to be expanded, from plants which are subject to other Federal orders and from unregulated plants, many of which are located at a considerable distance from the Duluth-Superior market, and are primarily associated with other markets. Under these circumstances, it is important to establish clearly which plants are sufficiently identified with the Duluth-Superior market to be subject to the pricing provisions of the order and to be included in the marketwide pool. This can be accomplished most appropriately by redefining such terms as pool plant, handler, producer, producer-handler, producer milk, other source milk, fluid milk product, and route.

The primary factor in determining which milk is to be completely subject to the pricing and pooling provisions of the order is the extent to which plants supply milk to the market for fluid use. Therefore, the definition of "pool plant" should include all plants which are primarily identified with supplying the fluid requirements of the Duluth-Superior market.

Three types of milk plant operations are included in the pool plant definition. One type of plant operation involves processing and bottling milk and distributing the packaged product on wholesale and retail routes in the marketing area. Such plants are commonly referred to as distributing plants. A second type of plant operation involves receiving milk from producers, assembling it into bulk lots, and shipping it either to distributing plants or, if the milk is not needed for bottling, to manufacturing plants. Such plants are commonly referred to as supply plants. The pool plant definition spells out the minimum percentage of milk received at such distributing and supply plants which must be disposed of to fluid outlets. A third type of pool plant includes plants operated by cooperative associations at which the percentage requirements for distributing or supply plants are not met but which must be maintained on a stand-by basis if the market is to be supplied adequately with fluid milk. These are the three types of plants at which the minimum prices paid to pro-

ducers for milk would be fully applicable and these performance requirements provide an objective basis for including such plants in the market-wide equalization pool.

The pool plant definition should specify the shipping performance standards which regular, dependable suppliers of fluid milk must meet. The standards should reflect the functional differences among the three types of pool plants which have been described.

A distributing plant should be qualified as a pool plant if the extent of Class I operations at the plant establishes clearly its identification with the market and its operation as essentially fluid in nature. Route distribution in the marketing area of a minimum of 10 percent of total Grade A milk receipts from dairy farmers, other plants, and from a cooperative association in its capacity as a handler, definitely associates the distributing plant with the market. Total Class I distribution on routes of 50 percent of such Grade A receipts clearly establishes the plant as primarily a distributing plant and eliminates the possibility of an operation in which a plant operator utilizes a relatively insignificant proportion of Grade A receipts in Class I with the intent of drawing money out of the pool on the larger proportion of such receipts which are used in the manufacture of Class II products. There is no evidence that any of the distributing plants serving the area would fail to meet the 50 percent standard.

Plants from which an average of less than 500 pounds of Class I milk per day is distributed on routes in the marketing area should be subject only to the reporting and auditing provisions of the order and should be exempt from its pooling and pricing provisions. The sale of such relatively small quantities of milk, less than one economical route, has little or no effect on the marketing of milk in the area. Application of order pricing and payment provisions to these distributors would entail considerable effort and expense without contributing significantly to the furtherance of orderly marketing conditions. However, it is necessary that such distributors be subject to such reporting and auditing provisions as the market administrator may require in order to establish their volume of sales in the area.

The order should also provide pooling standards for the supply plants from which distributing plants draw bulk supplies of milk. Plants from which supplemental supplies of milk are shipped to a market generally fall into two broad categories. One category includes plants serving as receiving stations where milk from producers is assembled into bulk lots for more convenient shipments to city plants. There are regular shipments of large quantities of milk from such plants and they are clearly so closely associated with the market as to make appropriate their pooling and full regulation.

The second category of supply plants are those from which only incidental shipments of milk are made to the market or from which regular shipments of limited quantities are made during only

the low production periods. They are not primarily associated with the market and need not be fully regulated. Such plants, from which supplies are drawn to the market for a short duration only and which may be located at widely scattered points, should be able to supply milk to the market during such periods of need without becoming fully subject to the order.

These different functions can best be recognized by defining as a "supply pool plant" any plant from which there is shipped during the month, to distributing pool plants at least 50 percent of the receipts of Grade A milk from dairy farmers. It is logical to assume that a supply plant is most closely identified with the market into which the majority of Grade A milk received at such plant is moved. Because of the seasonal variation in production the distributing pool plants require the largest quantities of supplemental milk in the fall and the least in the spring. Therefore, if a supply plant operation meets the shipping percentage standards in each of the months of September, October, and November, such plant should be designated as a pool plant until the end of the following August unless a written request for nonpool status is submitted to the market administrator. The qualifying period of September through November is recommended herein because, during the period 1954-58, this has been the three-month period during which Order No. 54 Class I utilization percentages have consistently been highest for the year.

Since these amendments will become effective after the close of the fall shipping season, provision should be made for those supply plants which have been pooled during the fall months of 1959 to remain pooled through August 1960. Thereafter, all plants should be required to meet the specified performance standards in order to qualify as pool plants.

With respect to plants operated by cooperative associations, pooling should be on the basis of the degree to which the entire membership of producers is identified with the fluid needs of the market. Up to the time of the hearing, most members of two associations were can shippers and the associations had operated their distributing and supply plants in traditional fashion. However, there had already been significant conversion to bulk shipment by some producers in the market, and further conversion is in prospect. The new assembly method increases the feasibility of shipping milk directly from farms to bottling plants instead of through the receiving stations. This increased flexibility in milk movement will tend to reduce the ability of the associations to keep their supply plants qualified as supply pool plants even though such plants would still be as completely identified with the market as before. There were indications at the hearing that the associations planned to close down some of the facilities which are equipped only to receive can milk and combine it into tank lots. However, those supply plants which are also equipped to manufacture reserve supplies would continue to operate. They would also be used to

receive any producer milk in cans or in bulk which was not needed on any given day at the bottling plants but which would be available for fluid use when otherwise needed.

Therefore, in recognition of the increased mobility of milk and the importance of the associations as suppliers, plants operated by cooperative associations should be qualified on either an individual or combined basis, as long as specified minimum percentages of the total quantity of Grade A receipts at plants operated by the cooperative are moved directly to other pool plants or are transferred by the association to other pool plants. A cooperative association should provide written notice to the market administrator of the plants to be included for pooling purposes. Such notice should be filed not later than the time of the regular report of receipts and utilization, on the 7th day of the following month.

During the period 1954-8, the Class I percentage as a percentage of total producer receipts was consistently highest during the months of September, October, and November and lowest during the months of April, May, and June. In order to qualify all of the plants operated by the two major cooperatives, the minimum percentages of Grade A milk furnished to distributing plants should be 40 percent in each of the months of September, October, and November, 30 percent during each of the months of December, January, February, March, July, and August, and 20 percent during each of the months of April, May, and June. Receipts from plants not qualified under these supply plant standards should be considered as other source milk.

It is quite possible for a distributing plant to be qualified as a pool plant under the Duluth-Superior order and, in the same month, to qualify as a pool plant under another Federal order. (It is not likely that a supply plant would be so involved, since over half of its supply must be shipped to distributing pool plants either in the current month or during specified fall months.) Objective standards should be provided for determining which of the two orders should be controlling. If the plant qualifies as a regulated plant under both orders, the volume of Class I sales in each market during the month would determine the applicable order. This standard would be appropriate in most circumstances. However, supply plants commonly qualify during a specified fall period, and provision should be made for a specific determination by the Secretary, based on the facts in any given case.

"Handler" is an inclusive definition designed to cover all persons operating plants or otherwise having responsibility with respect to the marketing of milk in the area. Subject to specified exemptions, the handler is the person who receives milk from producers and who is responsible for reporting receipts and utilization of milk and making payment therefor. It includes (a) persons operating pool plants, (b) persons operating nonpool plants from which Class I milk is distributed on routes in the marketing area, and (c) a cooperative

association with respect to member milk diverted to a nonpool plant. If an association is defined as a handler on diverted milk, the producers whose milk is diverted will continue to receive the uniform price under the order, they will remain an integral part of the market and their milk will be available for fluid use whenever it is needed.

In their exceptions, both producers and handlers pointed out that in the recommended decision cooperatives have not been defined as the handlers on bulk tank milk. The growing importance of bulk tank storage of milk on farms and farm-to-plant delivery in bulk tank trucks was described above, in connection with the pooling of plants operated by cooperatives.

The transportation of milk from farm to market in insulated tank trucks owned or operated by, or under contract to, cooperative associations has created a problem with respect to the determination of the responsibility to the individual producer. When milk comes to market in cans, the milk of individual producers is dumped, weighed, and a sample taken for butterfat testing by an employee of the plant where the milk is received. The operator of the plant is fixed with the responsibility for paying the individual producer for the pounds of milk received at the determined butterfat test.

When milk moves to market in a tank truck, the weight of the milk is checked and a sample for butterfat testing is taken at the farm. The milk of several producers is intermingled in the tank truck. When the tank trucks are owned or operated by, or under contract to, the cooperative association, the weight of each producer's milk is checked by, and a sample of milk for butterfat testing is taken by, a person who is an employee of, or a person directly responsible to, the cooperative association. The handler who receives the milk of several producers intermingled in the tank has no direct way of knowing the weight or the butterfat test of the milk of the individual producers whose deliveries make up the load, except as such information may be reported to him by the cooperative. In some instances, particularly in case of supplemental loads, the handler may not even know the identity of the producers whose milk he receives.

When a cooperative is in control of the transportation, it is more appropriate to permit the cooperative association, if it so chooses, to qualify as a handler under the order and to report for such milk handled. (In some cases it may be mutually agreeable for the proprietary firm to maintain accountability for such milk as the handler even though the cooperative performs the hauling function.) On the milk for which it chooses to be the handler, the cooperative association would be required to report to the pool and to charge class prices to the plant operator for such milk.

Cooperative associations may also be handlers in their capacity as operators of pool plants. Sales by such cooperatives to other handlers should also be at not less than class prices. However, the cooperative should not be the handler on producer milk which is delivered in cans

to more than one pool plant during the delivery period. The handlers on such milk should be the operators of the different pool plants to which the milk was delivered.

With respect to milk received from producers' farms in cans or tank trucks owned and operated by the distributing plant, the operator of such plant would continue to be the handler for such milk and would be required to account to the market administrator for it. For such milk the handler would make payment to the producer or cooperative association at the applicable uniform price. In situations in which a cooperative does not choose to be a handler on the bulk tank milk or in which a proprietary handler controls the tank trucks, a bulk load might be split between handlers on any given day or be delivered to more than one handler during the month. In such case the operator of the first pool plant at which the tank of milk is physically received each day should be the responsible handler.

It is concluded, therefore, that the cooperative association may become a handler on that bulk tank milk which is collected in trucks the cooperative owns or operates, or has under contract.

The term "producer" should be defined in order to identify those dairy farmers who are the producers of the regular supply of fluid milk and cream for the market, and to whom the minimum prices specified in the order should be paid. Only those dairy farmers who produce milk in compliance with the sanitary requirements for milk for fluid use as Grade A are qualified as producers. The order does not apply to dairymen producing manufacturing grade milk. Since it is the pool plants which are fully subject to the pricing, pooling, and payment provisions of the order, it is the dairymen delivering fluid grade milk to such plants who qualify as producers. The producer definition should also include those dairymen whose milk usually is received at a pool plant but which is diverted to a nonpool plant by the operator of a pool plant or by a cooperative association. Milk so diverted is deemed to have been received at the plant from which it was diverted.

In the recommended decision, diversion of milk from a producer's farm to nonpool plants was limited to 10 days during the nine months of July through March. In their exceptions, one of the cooperative associations called attention to the fact that this would seriously hamper their handling of milk at country plants.

This association operates plants at which both Grade A and manufacturing grade milk is received on days when the Grade A milk is not needed for bottling purposes. Under the terms of the attached order, such a plant would not qualify as a pool plant since health regulations do not permit milk to be shipped from such plant to Grade A bottling plants. These plants can still be used for the receipt and processing of producer milk even though they do not qualify as pool plants. The association can keep the milk pooled by diverting it from any pool plant at which

it has once been utilized for Grade A purposes. The record discloses that some loads of producer milk have been received continuously at these plants for periods as long as several months.

In the circumstances, the order should provide for unlimited diversion to non-pool plants. If such provision is used to associate milk with the market which does not, in fact, constitute part of the regular Grade A supply, consideration could be given to suitable amendments.

The present Duluth-Superior order is the only one in the United States which defines a "new producer" and provides that he be paid only the Class II price for his milk during the period from the first time he ships to the market through the second full calendar month following such first shipment. The expansion of the marketing area and the changes in the pool plant standards and other definitions relating to the scope of regulation involve marketing changes of substantial magnitude. These changes would be impeded by the discounted price to new producers. Moreover, the adjustment of the Class I price to more competitive levels correspondingly reduces the pressure for new producers to enter the market on a temporary or opportunistic basis. Therefore, no special price provisions for new producers have been provided in the revised order.

The term "producer-handler" should apply to a person who produces milk on his own farm and who operates at his own personal risk a plant from which a route is operated wholly or partly in the marketing area but who receives no milk from sources other than his own farm or from pool plants. Four producer-handlers are currently having their own milk production custom-processed at the regulated plants and returned to them for distribution under their own labels. This is permissible under the present order which does not require a producer-handler to operate processing facilities at his own personal risk. However, it is also possible for regulated handlers to avoid the pricing, pooling, and payment provisions by custom-processing in the same manner for each of their producers and thereby granting such handlers status as producer-handlers. This eventuality, which could render the order completely ineffective, could not occur if personal risk in the processing, packaging, and distribution was made a requisite to attaining producer-handler status as recommended herein.

Producers proposed that the producer-handler definition be limited to operations from which less than 1,000 pounds per day of Class I milk is distributed in the marketing area. It appears, however, that the principal objective sought to be achieved by the volume limitation is provided for by the requirement that a producer-handler utilize only his own production or receipts from pool plants. Milk transferred from pool plants to a producer-handler is classified as Class I. It follows that any supplemental milk purchased by producer-handlers will have been pooled and will not represent an unregulated source of supply to the producer-handler.

The definition of "producer milk" applies to milk received directly at a pool plant from the producers' farms. Any subsequent transfers of milk between pool plants are accounted for specifically rather than as producer milk. Milk from producers which is diverted to a nonpool plant should retain its status as producer milk.

"Other source milk" is specifically defined in the order to distinguish it from producer milk. It includes milk received at a pool plant from nonpool sources and products, other than fluid milk products, from any source which are reprocessed or converted to another product in the plant during the month.

A definition of "fluid milk product" is provided to facilitate reference in the subsequent sections of the order. The fluid milk products are those which constitute Class I use in the market and include fluid milk, skim milk, butter-milk, flavored milk, flavored milk drinks, concentrated milk not in hermetically sealed cans, cream, and fluid mixtures of cream and milk or skim milk, including reconstituted milk or skim milk, but not including frozen cream, serated cream products, eggnog, ice cream, and frozen dessert mixes.

The term "route" is used to define a number of types of milk distributing operations. It includes any delivery to retail or wholesale outlets of any fluid milk product. Deliveries to other milk processing plants, either pool plants or non-pool plants, are not included, but sales by a vendor or from a plant store are included.

3. Classification and allocation. At the hearing consideration was given to four changes in the classification and allocation provisions of the order. These involved a third class of utilization, changes in the transfer provisions, a revised method of accounting for inventories of fluid milk products, and clarification of the allocation sequence.

Classification. The major proposal to modify the classification of milk was to provide a separate classification, at a higher price, for milk used to produce cottage cheese and ice cream. During the course of the hearing, however, it was developed that these products are not required to be made from Grade A milk anywhere within the market. It became clear that the most probable result of a higher price would be to close these outlets to pool milk. The proposal was modified to apply to milk used to produce cottage cheese and ice cream for sale in jurisdictions where Grade A sources are required. Apparently this would apply only to cottage cheese sold by one handler to outlets within the Minneapolis-St. Paul marketing area. Under that order, however, cottage cheese is in Class II with all other manufactured dairy products and the price is below the Duluth Class II price, either as contained in the present order or as modified herein. In the circumstances, no change in classification should be made.

Transfers. The transfer provisions should be modified and clarified in several respects. Transfers between pool plants should be permitted in any class agreed upon by the handlers operating such plants so long as the prior claim

of producer milk for Class I sales is maintained. Transfers between pool plants at an agreed upon class will not affect the total value of producer milk under a marketwide pool so long as this prior claim is maintained.

Milk, skim milk, or cream transferred in bulk to a nonpool milk plant located more than 250 miles from the courthouse at Duluth, Minnesota, should be classified as Class I. There are adequate facilities for the manufacture of excess milk into Class II products within a radius of 250 miles. The automatic classification as Class I of milk or skim milk moved more than 250 miles will reduce the administrative expense which would otherwise be involved in having the market administrator verify actual utilization at nonpool milk plants located at extreme distances from the market.

Transfers to a producer-handler should be Class I since such operators would not be likely to purchase supplemental milk except for fluid purposes.

Transfers to nonpool plants within 250 miles should be Class I unless Class II utilization is claimed and specified conditions are met. One condition is that the milk be transferred in bulk rather than in consumer packages. A second is that the operator of the nonpool plant permit the administrator to verify all receipts and utilization at the plant. In such case, the pool milk should be assigned to the highest utilization remaining after assignment to Class I of any receipts of Grade A milk from local dairy farmers.

Inventory. Handlers have inventories of milk and milk products at the beginning and end of each month which must enter into the accounting for current receipts and utilization. It is appropriate that the ending inventory of fluid milk products be classified as Class II. This manner of classifying inventory, with correlated steps in the allocation procedure, provides a means of charging each handler for his Class I sales each month at the current Class I price. Fluid milk products whether in bulk or packaged form should be inventoried and classified as Class II. Manufactured milk products are not included in inventory accounting because the skim milk and butterfat used for such products are accounted for in the month when such products are manufactured. The market administrator may, of course, require that inventories as well as records of purchase and utilization be maintained for manufactured dairy products so as to provide for complete verification of the skim milk and butterfat received at the plant.

Uniformity in the application of the pricing provisions and simplicity of accounting are achieved if, so far as possible, Class I utilization during each month is assigned to current monthly receipts of producer milk. This can be accomplished by classification of closing inventory as Class II, and allocation of opening inventory to Class I only when current receipts of producers milk (except allowable Class II shrinkage) are less than Class I sales. In such case the handler should pay the difference between the Class II price for such milk in the preceding month and the current

Class I price. The volume on which this charge is made should not exceed the volume (in excess of allowable Class II shrinkage) for which producers were paid at the Class II price in the preceding month.

If the foregoing procedure does not result in a reclassification charge to all beginning inventory allocated to Class I, it is necessary to determine to what extent in the previous month other source milk became an inventory item, and thus was carried over to beginning inventory available for use as Class I milk. The amount of beginning inventory assigned to Class I milk but not covered by the reclassification charge which applies to pool sources would be subject to compensatory payment, provided that such a charge would not apply to any milk received from a plant regulated by another order where it had been classified under such other order as Class I milk.

Allocation. The allocation procedure should be clarified with respect to shrinkage of producer milk and to differentiate clearly between other source milk from plants subject to other Federal orders and that from unregulated sources. The revised procedure requires that skim milk and butterfat, respectively, remaining in each class be assigned to producer milk by making the following deductions in sequence from the gross utilization of each handler starting with Class II milk, except as otherwise noted:

- (1) Class II shrinkage of producer milk;
- (2) Other source milk from unregulated plants;
- (3) Other source milk from plants regulated under another Federal order;
- (4) Receipts from other handlers (according to classification);
- (5) Beginning inventory;
- (6) Add shrinkage deducted in (1); and
- (7) Overage.

One handler proposed that milk in consumer packages purchased from other Federal order markets by a Duluth-Superior handler and sold in the same package as received be allocated to Class I use in the Duluth-Superior plant, instead of being allocated to the lowest class of use.

There were no current instances of the purchase of packaged Class I items from other markets by Duluth-Superior handlers. Moreover, no future likelihood of such purchases was cited by the proponent. Furthermore, the supply of producer milk is adequate to cover all Class I requirements of the regulated handlers. It is concluded that under present conditions there is no need for giving Class I priority to supplies from other markets.

4. Class prices. The provisions of the order were reviewed with respect to the Class I price, including out-of-area pricing, the Class II price, butterfat differentials to handlers and producers, location adjustments to handlers and producers, and authorization for a determination of equivalent prices by the Secretary.

Class I price. The Duluth-Superior Class I price formula should be modified

by adopting the same basic formula price as is used in Federal orders in adjacent markets, changing the seasonal pattern of the stated differentials, and reducing the annual average of the differentials by 20 cents to \$0.90.

There was general agreement among the producers and handlers represented at the hearing that Class I prices must be reduced if the compensatory payment on milk from other Federal orders is eliminated. Such elimination is provided for herein for reasons discussed under topic number 5, below. A moderate reduction in the Class I price will help the Duluth-Superior handlers compete for sales with distributors from other order markets. Such competition already occurs both within this marketing area and in unregulated areas outside of the defined market. The Duluth-Superior producers will, of course, be aided to the extent that pool handlers are able to maintain or expand their Class I sales. In addition, the lower Class I prices will encourage local handlers to continue to purchase their supplies from local producers instead of from possible alternative sources.

The supply of producer milk which has been developed at the Class I prices which have been in effect for the past several years is more than ample to cover Class I needs. In fact, in each calendar year since 1953 less than half of the producer milk has been classified as Class I. Class I sales increased steadily from 58 million pounds in 1950 to 76 million pounds in 1957. Receipts from producers increased more rapidly, from 107 million pounds in 1950 to 172 million in 1957, and the percentage sold in Class I dropped from 54.1 to 44.2. These comparatively low percentages of Class I use reflect a considerable dilution of the Class I returns in the resultant blend prices. Clearly, it is to the interests of producers to have a competitive Class I price and so maintain or expand their proportion of Class I sales.

The basic formula price performs two important functions. The major one is that it reflects changes in the value of manufacturing grade milk. The second is that it will reflect such changes to the same degree in adjacent Federal order markets. In the present order the first of these basic formula functions is performed by the Class II price which, in turn, is a function of the market prices of butter and nonfat dry milk. In the Chicago, Minneapolis-St. Paul, Northeastern Wisconsin and Michigan Upper Peninsula orders the basic formula price is the higher of a butter-powder formula, which differs somewhat from the Duluth-Superior butter-powder price, and an average of prices paid for milk at a specified group of condensaries located in Wisconsin and Michigan. In view of the increasing importance of inter-market price alignment, it is appropriate to use the same basic formula price for the Duluth-Superior market.

The stated Class I differentials over the basic formula price should average \$0.90 per hundredweight. This compares with the present differential of \$1.10 which, however, is measured from a higher basic price. In 1958 the actual

Class I price in Duluth-Superior was equal to a differential of \$1.183 over this new basic formula. The annual average Class I differentials in other nearby Federal order markets are 90 cents in the Chicago 50-70 mile zone and 50 cents in some 21 (at plants in northwestern Wisconsin), 86 cents in Minneapolis-St. Paul, 97 cents at Ironwood, Michigan, under the Michigan Upper Peninsula order, and 84 cents at Rhinelander, Wisconsin, under the Northeastern Wisconsin order. In the Chicago and Minneapolis-St. Paul orders, the stated differentials are further subject to automatic supply-demand adjustments.

If the revised Class I price formula had been in effect, it would have resulted in prices averaging 30 cents lower than the actual Duluth-Superior price in 1956, 27 cents lower in 1957, and 28 cents lower in 1958. However, it will produce prices which compare favorably with Class I prices in the adjacent marketing areas.

A moderate seasonal variation in the stated differentials should be retained. The principal incentive to level production is provided by the Louisville Plan. However, seasonal variation in Class I prices in the adjacent markets makes it desirable to retain some seasonality in this market because of sales competition among the distributors in the respective markets. Prospective sales competition will be most intense with handlers regulated under the Minneapolis order. It is, therefore, appropriate that the seasonality of the Duluth Class I price correspond as closely as possible to that in Minneapolis. The Class I differential should be 75 cents in the months of December through June, \$1.15 in the months of July through October, and 95 cents in November.

Out-of-area price. No provision for lower Class I prices on out-of-area sales should be included in the order.

The Class I price under the Duluth-Superior order, and under Federal orders generally, is intended to be at such level as will bring forth a sufficient supply of milk for the market. Milk sold outside the defined area by regulated handlers meets the same standards and involves the same costs of production as that sold within the market. A lower price on such milk would reduce returns to producers, be an unsettling influence on the out-of-area markets, and, to the extent that the Class I price had to be raised to offset the reduced returns, would involve subsidization of the out-of-area sales by Duluth-Superior consumers.

Class II price. In the recommended decision the Class II price was based on a butter-powder formula which in recent years would have averaged 10 to 12 cents below the present Class II price, but still above the minimum class prices on milk used to manufacture butter and nonfat dry milk in the Chicago, Minneapolis-St. Paul, and Northeastern Wisconsin orders. It was designed to approximate the level of prices actually paid for manufacturing milk by specialized butter and byproduct plants in Minnesota and Wisconsin.

The recommended Class II price was subject to strong exceptions by the

cooperative association which is the largest handler of Class II milk in the market. The association called attention to its testimony of record to the effect that operating experience required a lower price to prevent losses on this portion of the business. They proposed that the Class II price should be equal to basic butter-powder formula, based on normal yields and a "make" allowance of 75.2 cents per hundredweight of milk.

Since this association is the major handler of Class II milk and since the principal Class II products are butter and nonfat dry milk it appears that predominant weight should be given to its operating experience rather than to the numerous other possible measures of the value of milk for manufacturing. It is concluded that the Class II price should be the basic butter-powder formula price.

Butterfat differentials. The butterfat differential to handlers on milk utilized as Class I should be reduced to 130 percent of the price of 92-score butter at Chicago instead of 140 percent of such price.

Data for the Duluth-Superior market reflect the common trend towards a lower proportion of butterfat in Class I sales. The trend is accounted for mainly by lower sales of cream and increasing sales of skim milk items. The reduced butterfat differential will assign a somewhat lower proportion of the Class I value to the butterfat and a higher proportion to the skim milk component. At least insofar as cost of raw material is concerned, this will help the competitive position of butterfat. However it is recognized that handlers' practices in pricing the end products and consumers' responses to price and to dietary or other considerations are not affected and these may well be the major factors in the trend towards a lower proportion of butterfat in Class I sales.

There were proposals at the hearing to reduce the Class I butterfat differential still further. However, the average butterfat content of Class I sales in 1958 was 3.86 percent. This is still well above the basic test of 3.5, and a comparatively high differential therefore results in a net contribution to the pool. Such gain must, of course, be balanced against the effect of price on the utilization of the butterfat and skim milk components.

The Class II butterfat differentials should also be reduced by using 120 percent of the 92-score butter price instead of 125 percent of such price. This will tend to reduce the price of cream for ice cream manufacture to more competitive levels and will correspondingly increase the returns from skim milk used in the manufacture of cottage cheese.

The butterfat differential to producers for milk containing more or less than 3.5 percent butterfat should correspond to the weighted average values of the butterfat and skim milk in producer milk utilized by handlers in Class I and Class II. This follows the same principle as the payment of a uniform price to all producers. Each producer shares equally in the total value of the handlers' Class I and Class II utilization, at the basic test of 3.5 percent butterfat. It is equally appropriate that each should receive the

average utilization value of the butterfat and skim milk components for milk testing above or below 3.5 percent.

Location differentials. Class I milk products are bulky and perishable and therefore incur a relatively high transportation charge if moved a considerable distance. Milk delivered directly by farmers to plants in or near the urban centers in the marketing area is therefore worth more to a handler than milk which is received from farmers at a plant located many miles from the market. This is so because in the latter instance the handler must incur the additional cost of moving that milk into the central market. The producer, in turn, receives less for milk delivered to points distant from the marketing area to the extent of the additional cost of hauling his milk into the central market. Under these conditions, the value of producer milk delivered to plants located at some distance from the central market is reduced in proportion to the distance (and the cost of transporting such milk) from the point of receipt to the central market.

There are several distant distributing plants from which milk is sold within the proposed additional marketing area. It is also possible that other distributing plants or supply plants may become fully or partially associated with the market. The operators of such distant plants would incur substantial transportation costs on their milk before reaching any portion of the marketing area and they should be allowed an offsetting credit in order to be fully competitive with the pool plants located within the marketing area. In the absence of location adjustments these handlers would absorb the cost of transporting such milk sold in the marketing area but would pay their producers the full f.o.b. market price on all receipts of producer milk. This would be contrary to the basic principle of location differentials which places a lower value on milk received from producers at points distant from the marketing area.

As a result of the extensive additional marketing area in Wisconsin, it is appropriate to designate Ashland, Wisconsin, and Duluth, Minnesota, as the central points upon which location differentials should be based. The distances used in determining location differentials should be measured from the courthouses at Duluth or Ashland, whichever is closest, by the shortest highway distance, as determined by the market administrator.

There should be no location adjustment at plants located within 55 miles of these two points. The 55-mile zone includes all the plants serving the present market and most of those which would be serving the additional territory recommended herein. These plants compete with each other so extensively throughout the marketing area that different Class I prices based upon plant location would not be appropriate.

In the 55-65 mile zone the rate of location adjustment should be 8 cents per hundredweight of milk. The rate should be increased by 1.3 cents per hundredweight for each additional 10 miles or fraction thereof in excess of 65 miles. These rates are designed to reflect trans-

portation costs on milk moved in bulk tanks. The rate of 1.3 cents per 10 miles is the same as is used in the Chicago order for plants located beyond the 70-mile zone. Under the Minneapolis-St. Paul order the rate is only 1 cent per 10 miles beyond 50 miles but is 14 cents at the 40-50 mile zone.

A method should be provided for determining the priority of milk from various plants in allocating to Class I for the purpose of computing the aggregate of location differentials to be allowed. Such differentials would be made for each handler in sequence beginning with milk received directly from producers and then milk received from those plants which have the lowest location differential.

Payments to distant producers should be reduced by the amount of the applicable location differential. Under these conditions the value of producer milk delivered to plants would be reduced in proportion to the distance that such plant is from Duluth or Ashland by the same rate that applies to Class I milk.

Equivalent price. If for any reason a price quotation required by this order for computing class prices or for any other purpose is not available in the manner described, the market administrator should use a price determined by the Secretary of Agriculture to be equivalent to the price which is required. Experience has shown that market quotations provided in the order at times may not be available, or may be discontinued. It is concluded that provision for such contingencies should be made by providing for a determination by the Secretary of Agriculture of a price(s) equivalent to such quotations or prices.

5. Provisions with respect to unpriced milk. Exceptions to the recommended decision were unusually numerous and most of them were directed to the provisions regarding milk not fully classified and priced under the Duluth-Superior order. Apparently the need for such provisions was not fully understood, and additional comments on the problems involved are, therefore, in order.

At the time this order was last reviewed (1950), the Duluth-Superior market was still entirely local in character. The possibility of obtaining milk from other Federal order markets, or from other distant sources, seemed remote. Currently, however, milk from a handler operating plants at Stillwater and Rush City is distributed at Iron Range locations north of Duluth, a Minneapolis handler has applied for a permit to distribute in Duluth, and there are orders in effect in the Northeastern Wisconsin and Michigan Upper Peninsula markets. The order must be revised to reflect these changes in the marketing of milk.

Under the terms of the present order the Grade A milk at all plants at which any milk is associated with the market in any way is priced and pooled. One result is that the Duluth pool includes a plant at which the major portion of the Grade A milk is used for the production of cottage cheese sold in the Twin Cities. Any other plant operator whose main interest is in the production of manufactured dairy products could similarly qualify a Grade A supply by making

token shipments to Duluth and thereby draw from the equalization fund to give his shippers a share of the Class I returns.

A second result concerns any plant which might be subject to another Federal order in its primary sales territory. It might, however, have a minor proportion of sales in the Duluth-Superior marketing area. Since the Duluth order pools any plant, without exception, such plant would be simultaneously subject to two orders. Obviously, such an untoward result should be avoided by providing appropriate standards for determining which of the two orders should apply to any given plant.

It has been previously explained (Topic 2, above) that expansion of the marketing area and advances in technology have involved in the Duluth-Superior market some operators of distributing and supply plants which are not primarily associated with this market. Accordingly, the plants involved are not made subject to the complete pricing, classification, and pooling provisions of the order.

There are two major categories of other source milk which may be involved. One is that Duluth-Superior pool handlers may receive supplementary supplies of milk at their plants from plants which fail to qualify as supply pool plants. The second category consists of distributing handlers who sell some milk in the market but whose plants fail to qualify as pool plants. In each of the two cases, subcategories arise from the fact that the other source milk may be subject to other Federal orders or it may be from totally unregulated sources.

In the case of milk from sources not fully subject to any Federal order which is received at Duluth-Superior pool plants and allocated to Class I, compensatory payments should be assessed. Such payments should apply in all months of the year, but should be eliminated whenever receipts from producers at all pool plants in the market are less than 110 percent of Class I utilization at such plants.

Plant operators must have available a larger supply of milk than is necessary to fill their Class I requirements on any given day. Reserves are needed because production fluctuates seasonally without corresponding changes in the demand for Class I milk. Reserves are also needed to cover short-time fluctuations in receipts and for variations in Class I requirements resulting from 5- or 6-day bottling, the heavy weekend demand at grocery stores, holidays, and similar factors. The reserve milk is commonly manufactured into the more storable and transportable dairy products which are sold in competition with products made from manufacturing grade milk. The existence of this reserve Grade A milk, which must be marketed at a lower price, is a primary element of instability affecting fluid milk markets.

Considerable volumes of Grade A milk are carried as reserve milk and must be disposed of for manufacture by various unregulated plants in the territory adjacent to the Duluth-Superior market.

Both Minnesota and Wisconsin are primary dairy states, and numerous potential sources of unregulated Grade A milk were described in the record. Since this reserve milk in other markets is ordinarily converted to manufactured dairy products, the seller could be expected to be willing to market it at any price which would net him more than the manufacturing value. Consequently, handlers under the Duluth-Superior order could expect to obtain such reserve milk at approximately the manufacturing values as reflected in the Class II price under the order. It is, therefore, appropriate that the compensatory payment on other source milk allocated to Class I should be the difference between the Class II price and the Class I price, adjusted to the location of the plant from which such other source milk was received from farmers. This rate will reflect generally the difference in value between unregulated and regulated milk for Class I use. The payment will, therefore, remove any competitive sales advantage which the regulated handler might otherwise obtain by substituting other source milk for available producer milk.

The compensatory payment should apply in all months except those in which the market supply of producer milk is inadequate to fill Class I requirements, including an operating reserve of 10 percent. Although supplies in the market have been substantially in excess of a 10 percent reserve, it is desirable to provide for the eventuality of a shortage. Unregulated handlers commonly maintain a high utilization and there is every reason to expect that any conditions which would result in a short supply in Duluth-Superior would leave them short, too. It follows that during a shortage period regulated handlers would probably have to pay more than the Class I price for supplementary supplies of Grade A milk. Compensatory payments would not be appropriate under such circumstances.

Other source milk used in the form of nonfat dry milk should be considered to be from a source at the location of the pool plant where it is used. In some instances there will be no, and in all cases insignificant, transportation charges per hundredweight experienced by handlers on such other source milk under the skim milk equivalent basis of accounting provided in the order. By following this procedure, the compensatory payment or other source milk derived from nonfat dry milk will be comparable to that on any other source milk which is allocated to Class I milk.

Another category of unpriced milk is that sold on routes in the marketing area by handlers operating nonpool plants. These are the plants which are primarily associated with some other market but from which at least 500 pounds per day, but less than 10 percent of the total receipts of Grade A milk at the plant are disposed of as Class I in the marketing area or less than 50 percent of such receipts are so disposed of either within or outside of the marketing area. On the basis of conditions described in the record, there is at least one handler in this category. Other handlers may, of course, be similarly situated, either now or in the future.

The problem of dealing with unpriced milk at the plant of nonpool distributors differs in important respects from those involved in the purchase of other source milk by the operators of pool plants. There are only a few nonpool distributors and their sales in the market are on a regular basis, whereas the purchase of supplemental milk by regulated pool plants would be from many sources and on a sporadic basis. Unlike the operators of plants furnishing supplemental milk, the nonpool distributors would be reporting regularly to the market administrator and would be aware of the terms of the order.

It is appropriate that a nonpool distributor have the option of paying either the difference between the Class I and Class II prices on his fluid sales within the area or any amount by which such operator has failed to pay his Grade A dairy farmers the use value of milk at order prices. Under conditions prevailing in this region, the regulated handlers and producers serving the market were concerned only that partially regulated handlers be denied any competitive advantage based on minimum class prices paid for milk. They were not concerned over any possibility that such handlers would have any competitive advantage in the procurement of milk through lack of pooling.

Handlers operating nonpool distributing plants are required to file such reports as will enable the market administrator to verify their nonpool status. Under the second option described in the preceding paragraph (that of making minimum payments to dairy farmers) the nonpool distributor would file a complete report of receipts and utilization. From such reports, subject to audit, the value of his disposition of milk would be computed at the class prices adjusted for location and butterfat content in the same manner as for a pool plant. From this utilization value, the market administrator would subtract cash payments to the Grade A dairy farmers who constitute the regular supply of milk at the nonpool plant. Only such payments would be recognized as had been made to dairy farmers by the 25th day following the end of the delivery month. The payments would be the gross amount paid for milk delivered by farmers to the nonpool plant. The only allowable deductions would be those properly chargeable to the dairy farmers for supplies or services, including hauling. Any amount by which such payments failed to equal the utilization value of the milk would be payable to the equalization fund. In this way, the nonpool plant operator would be fully equated, so far as the utilization cost of his milk is concerned, with the pool plant operators.

The nonpool plant may receive milk from other plants rather than directly from dairy farmers. If the shipping plant serves primarily as a receiving station for the nonpool distributing plant, all of the receipts and utilization of milk at both plants should be reported to determine whether the dairy farmers have been paid the equivalent of order prices at other nonpool plants. Milk may be received both from dairy farmers and from other plants. In such in-

stances, the dairy farmers milk and receipts from other plants will be allocated in the same fashion as if the plant were a pool plant and compensatory payments would apply if such milk did not come from a plant subject to a Federal order.

The option of paying the difference between the Class I and Class II prices on the quantities sold as Class I in the marketing area should also be available to any handler operating a nonpool plant. Such payment will remove any competitive sales advantage as compared with fully regulated handlers.

The assessment of administrative expense should depend upon which option is chosen by the nonpool distributor. If he elects to pay the difference between Class I and Class II prices on his in-area sales, he should pay administrative expense only on such quantities. However, if he elects the payment-to-dairy-farmers option, he should pay administrative expense on his entire receipts from the Grade A dairy farmers. Obviously, the second option involves fully as much verification of receipts and utilization by the market administrator as at a pool plant. Such verification might well include the checking of weights and butterfat test of receipts from dairy farmers and of the product sold as well as an audit of the books and records. Also, some of the fully regulated plants could have nearly as large a proportion of out-of-area sales as a nonpool distributor, yet be assessed administrative expense on their entire receipts.

No compensatory payments should be assessed on Class I milk from plants which are fully subject to the classification and pricing provisions of another Federal order. Such milk may enter the Duluth-Superior market either as supplementary milk delivered to pool plants or as route sales by a distributor subject to other orders. In either case, the classification and price will have been clearly established under another order.

The Duluth-Superior Class I price has been adjusted to make it more competitive with those in the adjacent orders. If it develops that an appropriate alignment has not been achieved, consideration can be given to further amendment of the orders involved.

6. Distribution of proceeds. The three principal proposals which involved changing the distribution of sales proceeds to producers were (1) substituting individual-handler pooling for the present marketwide pool, (2) changing the months of operation of the Louisville Plan, and (3) modifying the privilege of cooperative associations to reblend sales proceeds in making payments to producer-members.

Type of pool. In the Duluth-Superior market the handling of the milk not needed for fluid purposes is not evenly distributed among the regulated handlers. Instead, this function is performed principally by the cooperative associations, and the quantities of excess milk are comparatively large. Once such specialization in the handling of the excess milk has been established, individual-handler pooling would have seriously disruptive and uneconomic

tendencies. Clearly, the marketwide pool should be retained.

Louisville Plan. The very large number of exceptions filed with respect to the recommended changes in this seasonal incentive plan have prompted a careful review of the evidence with respect to the seasonality problem.

Under the present order, the Class I differential of \$1.00 per hundredweight in the flush production months of April through July is only 15 cents less than in the other 8 months of the year. In the attached order, there are Class I differentials of 75 cents in the months of December through June, 95 cents in November, and \$1.15 in July through October, leaving a 40-cent difference between the high and low months. This seasonal pattern is closely similar to that prevailing in Minneapolis-St. Paul, the market most closely competitive with Duluth.

Under the present order, the uniform price paid to producers during the take-out months of the Louisville Plan have been only slightly above the value of manufacturing grade milk. At the lower level of Class I differentials the blend might well be reduced below manufacturing values.

In view of the possibility that unduly low blend prices would occur during two take-out months and the greater seasonality in the Class I differentials, it is concluded that the Louisville Plan should be eliminated. It is further noted that in recent years supplies of producer milk have been well in excess of Class I needs in every month of the year. If there is any marked deterioration in the seasonality of production, further consideration can be given to the problem at a future hearing.

Reblending by cooperative associations. The two principal cooperative associations of producers in the market operate distribution routes. Other handlers maintained that associations in this position could use the reblending privilege to reduce prices to members in order to gain a distributive advantage. They offered several amendments designed to provide a limit to such advantage. However, reblending by a cooperative association is clearly authorized by the Act. The proposals were clearly designed to prohibit or render ineffective the reblending privilege and are therefore denied.

7. Administrative changes. Changes in the dates upon which the market administrator is required to announce the class prices have been made necessary because the manufacturing prices to be used in calculating the new class prices will be available later than the basic manufacturing prices used in the present order. At present the market administrator announces both the Class I and Class II price at the end of the preceding month. Under the amended order, the Class I price announcement will be made on or before the 6th day of the month for which the price is to be effective and the Class II announcement will be made by the 6th day of the month following the effective month. Handlers will not know the Class II price in advance, as has previously been the case, but it will more nearly reflect actual market values of dairy products during

the same month they are manufactured by handlers. The announcement date for the uniform price will continue, as before, to be the 12th day of the month following the effective month.

Under the amended order the market administrator will bill handlers by the 13th day of the month following the effective month. Such notification date is not specified in the present order.

No other changes in dates for filing reports and making payments have been made.

The following time schedule should allow all interested persons sufficient time to perform required functions. (These time limits apply to the indicated day of the month following the month for which computations are being made unless otherwise indicated.)

Day of the month and function:

6th: Announcement by the market administrator of the Class I price for the current month and of the Class II price for the preceding month.

7th: Submission of monthly report of receipts and utilization by handlers.

12: Announcement of uniform prices by market administrator.

13th: Notification by market administrator to handlers of the value of their producer milk and amounts due to or payable from the producer-settlement fund.

15th: Payment by handlers of amounts due to producer-settlement fund and to market administrator for expenses of administration and marketing services.

17th: Payments by market administrator out of producer-settlement fund.

20th: Payments by handlers to producers for milk delivered in preceding month.

25th: Handlers' reports of payments to producers.

The reporting requirements should be clarified to require that handlers report receipts and utilization separately at each plant. This will put handlers operating multiple plants on the same basis as handlers operating single plants with respect to accounting for shrinkage and overage. Also, separate reports for each plant will facilitate the determination of pool plant status of each plant.

The market administrator should also be specifically authorized to obtain from all handlers any supplementary reports that he feels may be important in establishing the receipts and utilization of milk. The present order provides that handlers operating pool plants need submit only the regular monthly report of receipts and utilization, on the 7th day after the close of each month.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties in the market. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously

made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on exceptions. In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled respectively, "Marketing Agreement Regulating the Handling of Milk in the Duluth-Superior Marketing Area", and "Order Amending the Order Regulating the Handling of Milk in the Duluth-Superior Marketing Area", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered. That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which will be published with this decision.

Referendum Order; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referendum be conducted to determine whether the issuance of the attached order amending the order regulating the handling of milk in the Duluth-Superior marketing area, is approved or favored by the producers, as defined under the terms of the order, as hereby proposed to

be amended, and who, during the representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

The month of November, 1959, is hereby determined to be the representative period for the conduct of such referendum.

Earl E. Gulland is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders (15 F.R. 5177), such referendum to be completed on or before the 30th day from the date this decision is issued.

Issued at Washington, D.C., this 15th day of January 1960.

CLARENCE L. MILLER,
Assistant Secretary.

Order Amending the Order Regulating the Handling of Milk in the Duluth-Superior Marketing Area

DEFINITIONS

Sec.	Findings and determinations.
954.0	Act.
954.1	Secretary.
954.2	Department.
954.3	Person.
954.4	Cooperative association.
954.5	Duluth-Superior marketing area.
954.6	Pool plant.
954.7	Nonpool plant.
954.8	Handler.
954.9	Producer.
954.10	Producer-handler.
954.11	Producer-milk.
954.12	Other source milk.
954.13	Fluid milk product.
954.14	Route.

MARKET ADMINISTRATOR

954.20	Designation.
954.21	Powers.
954.22	Duties.

REPORTS, RECORDS, AND FACILITIES

954.30	Reports of receipts and utilization.
954.31	Payroll reports.
954.32	Other reports.
954.33	Records and facilities.
954.34	Retention of records.

CLASSIFICATION

954.40	Basis of classification.
954.41	Classes of utilization.
954.42	Shrinkage.
954.43	Responsibility of handlers and reclassification of milk.
954.44	Transfers.
954.45	Computation of milk in each class.
954.46	Allocation of skim milk and butterfat classified.

MINIMUM PRICES

954.50	Basic formula price.
954.51	Class prices.
954.52	Butterfat differentials to handlers.
954.53	Location differentials to handlers.
954.54	Equivalent prices.

APPLICATION OF PROVISIONS

954.60	Producer-handler.
954.61	Plants subject to other Federal orders.
954.62	Handler operating a nonpool plant.

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

DETERMINATION OF UNIFORM PRICE

Sec.	Computation of the value of producer milk for each handler.
954.70	Computation of the uniform price.
954.71	Notification of handlers.
954.72	

PAYMENTS

954.80	Time and method of payment.
954.81	Location differential to producers.
954.82	Butterfat differential to producers.
954.83	Producer-settlement fund.
954.84	Payments to the producer-settlement fund.
954.85	Payments out of the producer-settlement fund.
954.86	Adjustment of accounts.
954.87	Marketing services.
954.88	Expense of administration.
954.89	Termination of obligations.

MISCELLANEOUS PROVISIONS

954.90	Effective time.
954.91	Suspension or termination.
954.92	Continuing obligations.
954.93	Liquidation.
954.94	Agents.
954.95	Separability of provisions.

§ 954.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Duluth-Superior marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in the order

as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such amount not to exceed 4 cents per hundredweight as the Secretary may prescribe, with respect to the quantities of milk specified in § 954.88.

Order relative to handling: It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Duluth-Superior marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as hereby amended, and the aforesaid order is hereby amended as follows:

DEFINITIONS

§ 954.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

§ 954.2 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the United States authorized to exercise the powers and to perform the duties of the Secretary of Agriculture.

§ 954.3 Department.

"Department" means the United States Department of Agriculture or such other Federal agency authorized to perform the price reporting functions specified in this part.

§ 954.4 Person.

"Person" means any individual, partnership, corporation, association, or any other business unit.

§ 954.5 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association, to be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act."

§ 954.6 Duluth-Superior marketing area.

"Duluth-Superior marketing area" hereinafter called the "marketing area" means all of the territory within Carlton County and the city of Duluth, in the State of Minnesota; and all of the territories within the counties of Ashland, Bayfield, and Douglas, in the State of Wisconsin.

§ 954.7 Pool plant.

A "pool plant" shall be any plant meeting the conditions of paragraph (a), (b), or (c) of this section except the plant of a producer-handler or one exempt under § 954.61;

(a) Any plant, hereinafter referred to as a "distributing pool plant", in which

fluid milk products are pasteurized or packaged and from which there is disposed of during the month as Class I milk on routes an amount equal to 50 percent or more of total receipts of Grade A milk at such plant from dairy farmers, from other plants, and from cooperative associations in their capacity as handlers and from which there is disposed of as Class I milk on routes in the marketing area an amount equal to 10 percent or more of such total receipts: *Provided*, That such Class I sales distribution in the marketing area averages at least 500 pounds per day;

(b) Any plant, hereinafter referred to as a "supply pool plant", from which during the month 50 percent or more of its supply of Grade A milk from dairy farmers is moved to a distributing pool plant(s): *Provided*, That any supply plant which has qualified as a pool plant in each of the months of September, October, and November shall be a pool plant for each of the following months of December through August unless written request for nonpool status is furnished in advance to the market administrator: *And provided further*, That any plant from which milk was supplied to distributing plants and which was fully subject to the provisions of this part during each of the months of September, October, and November 1959, shall be a pool plant for each of the months through August 1960, unless written request for nonpool status is furnished to the market administrator;

(c) A plant(s) (1) which is approved by a duly constituted health authority for the handling of Grade A milk, (2) is operated by a cooperative association, and (3) from which the quantity of milk transferred by the association to plants specified in paragraph (a) of this section or delivered directly from the farm to such plants is equal to at least the following percentages, in the months indicated, of the quantity of Grade A milk delivered by all producers who are members of such association:

Month	Minimum percentage
September, October, November	40
April, May, June	20
All other months	30

The association shall furnish written notice to the market administrator specifying the plant(s) to be qualified pursuant to this paragraph (c) and the period during which such consideration shall apply. Such notice, and notice of any change in designation, shall be furnished on or before the 7th day following the month to which such notice applies.

§ 954.8 Nonpool plant.

"Nonpool plant" means any milk receiving, manufacturing, or processing plant other than a pool plant.

§ 954.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant, or

(b) Any person who operates a nonpool plant from which fluid milk products are disposed of on routes in the marketing area; or

(c) A cooperative association with respect to the milk of producers which

is diverted from a pool plant to a nonpool plant for the account of such cooperative association;

(d) A cooperative association which chooses to report as a handler with respect to the milk of its member producers which is delivered to the pool plant of another handler in a tank truck owned or operated by or under contract to such cooperative association for the account of such cooperative association. Such milk shall be considered as having been received by such cooperative association at the plant to which it is delivered.

§ 954.10 Producer.

"Producer" means any person, other than a producer-handler, who produces milk in compliance with the Grade A inspection requirements of, or acceptable to, a duly constituted health authority, and whose milk is (a) received at a pool plant, or (b) caused to be diverted from a pool plant to a nonpool plant by a handler or cooperative association for the account of such handler or cooperative association. Milk so diverted shall be deemed to have been received by the diverting handler at the plant from which it was diverted.

§ 954.11 Producer-handler.

"Producer-handler" means a person who operates both a dairy farm(s) and a milk processing or bottling plant at which each of the following conditions are met during the month:

(a) Milk is received from the dairy farm(s) of such person but from no other dairy farm;

(b) Fluid milk products are disposed of on routes in the marketing area; and

(c) The butterfat or skim milk disposed of in the form of fluid milk products does not exceed the butterfat or skim milk, respectively, received in the form of milk from the dairy farm(s) of such person and in the form of fluid milk products in bulk or in packaged form from pool plants of other handlers: *Provided*, That such person shall furnish to the market administrator for his verification, subject to review by the Secretary, evidence that the maintenance, care and management of the dairy animals and other resources necessary for the production of milk in his name are and continue to be the personal enterprise of and at the personal risk of such producer and the processing, packaging and distribution of the milk are and continue to be the personal enterprise of and at the personal risk of such person in his capacity as a handler.

§ 954.12 Producer milk.

"Producer milk" means all skim milk and butterfat in milk produced by a producer and received at a pool plant directly from producers or diverted pursuant to § 954.10.

§ 954.13 Other source milk.

"Other source milk" means all skim milk and butterfat contained in:

(a) Receipts during the month of fluid milk products except: (1) Receipts from other pool plants, (2) receipts from a cooperative association pursuant to § 954.9(d), or (3) producer milk; and

(b) Products, other than fluid milk products, from any source (including those produced at the plant) which are reprocessed or converted to another product in the plant during the month.

§ 954.14 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, concentrated milk or milk drinks not in hermetically sealed cans, cream, and fluid mixtures of cream and milk or skim milk, including reconstituted milk or skim milk, but not including frozen cream, aerated cream products, eggnog or ice cream and frozen dessert mixes.

§ 954.15 Route.

"Route" means any delivery to retail or wholesale outlets (including delivery by a vendor or a sale from a plant or plant store) of any fluid milk product, other than a delivery in bulk form to a pool plant or nonpool plant.

MARKET ADMINISTRATOR

§ 954.20 Designation.

The agency for the administration of this part shall be a market administrator, appointed by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal by, the Secretary.

§ 954.21 Powers.

The market administrator shall have the following powers with respect to this part:

- (a) Administrator its terms and provisions;
- (b) Receive, investigate, and report to the Secretary complaints of violations;
- (c) Make rules and regulations as are necessary to effectuate its terms and provisions; and
- (d) Recommend amendments to the Secretary.

§ 954.22 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including but not limited to the following:

- (a) Within 45 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date upon which he enters duty, and conditioned upon the faithful performance of his duties, and in an amount and with surety thereon satisfactory to the Secretary;
- (b) Employ and fix the compensation of such persons as may be necessary to enable him to administer the terms and provisions of the part;
- (c) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;
- (d) Pay from the funds received pursuant to § 954.88 the cost of his bond and of the bonds of his employees, his own compensation, and all other expenses, except those incurred under § 954.87, that are necessarily incurred by

him in the maintenance and functions of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for herein, and, upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Submit his books and records to examination by the Secretary and furnish such information and reports as the Secretary may request;

(g) Verify all reports and payments of each handler, by audit as necessary of such handler's records and the records of any other person upon whose utilization the classification of skim milk and butterfat depends;

(h) Publicly announce, at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any handler or other person who, within 5 days after the date upon which he is required to perform such acts, has not made reports pursuant to §§ 954.30 to 954.32 or payments pursuant to §§ 954.80 to 954.83;

(i) Publicly announce by posting in a conspicuous place in his office and by such other means as he deems appropriate and, mail to each handler at his last known address, the price determined for each month as follows:

(1) On or before the 6th day of each month, the Class I price and butterfat differential for the month, computed pursuant to §§ 954.51(a) and 954.52(a), respectively;

(2) On or before the 6th day of each month, the Class II price and butterfat differential for the preceding month, computed pursuant to §§ 954.51(b) and 954.52(b), respectively;

(3) On or before the 12th day of each month, the uniform price for producer milk computed pursuant to § 954.71, the location differential computed pursuant to § 954.81, and the butterfat differential computed pursuant to § 954.82, all for the preceding month;

(j) Prepare and make available for the benefit of producers, consumers, and handlers, such general statistics and such information concerning the operations of this part as are appropriate to its purpose and functioning, and which do not reveal confidential information.

REPORTS, RECORDS, AND FACILITIES

§ 954.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month each handler, except a producer-handler or a handler making payments pursuant to § 954.62(a), shall report to the market administrator, with respect to each plant, in the detail and on forms prescribed by the market administrator as follows:

(a) The receipts of milk from producers, the average butterfat test, and the pounds of butterfat contained therein;

(b) The quantities of skim milk and butterfat contained in (or used in the production of) fluid milk products received from other handlers;

(c) The quantities of skim milk and butterfat contained in receipts of other source milk;

(d) The pounds of skim milk and butterfat contained in all fluid milk products on hand at the beginning and at the end of the month;

(e) The utilization of all skim milk and butterfat required to be reported pursuant to this section;

(f) Such other information with respect to receipts and utilization as the market administrator may prescribe.

§ 954.31 Payroll reports.

On or before the 25th day of each month, each handler except a producer-handler or a handler making payments pursuant to § 954.61 or § 954.62(a) shall submit to the market administrator his producer payroll for receipts during the preceding month which shall show:

(a) The total pounds of milk, the average butterfat test thereof, and the pounds of butterfat received from each producer and cooperative association.

(b) The amount of payment to each producer, and

(c) The nature and amount of any deduction or charges involved in such payments.

§ 954.32 Other reports.

Each handler operating a pool plant, each producer-handler, and each handler making payments pursuant to § 954.62(a) shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

§ 954.33 Records and facilities.

Each handler shall maintain and make available to the market administrator during the usual hours of business such accounts and records of his operations and such facilities as are necessary for the market administrator to verify or establish the correct date with respect to:

(a) The receipt and utilization of all skim milk and butterfat handled in any form;

(b) The weights and tests for butterfat and other content of all products handled;

(c) The pounds of skim milk and butterfat contained in or represented by all items of products on hand at the beginning and end of each month; and

(d) Payments to producers and cooperative associations, including any deductions, and the disbursement of money so deducted.

§ 954.34 Retention of records.

All books and records required under this order to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which such books and records pertain: *Provided*, That if, within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the han-

dler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 954.40 Basis of classification.

All skim milk and butterfat required to be reported pursuant to § 954.30 shall be classified by the market administrator pursuant to the provisions of §§ 954.41 through 954.46.

§ 954.41 Classes of utilization.

The classes of utilization of milk shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk (including the skim milk equivalent of concentrated products) and butterfat (1) disposed of in the form of fluid milk products except those classified pursuant to paragraph (b) (2) and (3) of this section, and (2) not specifically accounted for as Class II milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat (1) used to produce a product other than a fluid milk product, (2) contained in inventory of fluid milk products on hand at the end of the month, (3) disposed of as livestock feed or skim milk dumped, subject to prior notification to and inspection (at his discretion) by the market administrator, (4) in shrinkage allocated to producer milk (except with respect to milk diverted to a nonpool plant pursuant to § 954.10) that is not in excess of 2 percent of the receipts of skim milk and butterfat, respectively, in producer milk plus 1.5 percent of receipts of skim milk and butterfat, respectively, received in bulk tank from pool plants, or received from a cooperative association pursuant to § 954.9(d) less 1.5 percent of skim milk and butterfat, respectively, disposed of in bulk tank to pool plants, and (5) in shrinkage of other source milk.

§ 954.42 Shrinkage.

The market administrator shall allocate shrinkage over a handler's receipts as follows:

(a) Compute the total shrinkage of skim milk and butterfat, respectively, for each handler; and

(b) Prorate the resulting quantities between the receipts of skim milk and butterfat, respectively: (1) In the quantity of milk from producers (except with respect to milk diverted to a nonpool plant pursuant to § 954.10), in bulk from the pool plants of other handlers, and from cooperative associations pursuant to § 954.9(d) and (2) in other source milk received in the form of fluid milk products.

§ 954.43 Responsibility of handlers and reclassification of milk.

(a) All skim milk and butterfat shall be Class I milk unless the handler who first received such skim milk and butterfat proves to the market administrator

that it should be classified otherwise; and

(b) Any skim milk and butterfat shall be reclassified if verification by the market administrator discloses that the original classification was incorrect.

§ 954.44 Transfers.

Skim milk and butterfat transferred or diverted by a handler shall be classified:

(a) As Class I milk if transferred to the pool plant of another handler unless utilization in Class II is mutually indicated to the market administrator in the reports submitted by both handlers for the month in which such transfer occurred, but in no event shall the amount classified in either class exceed the total use in such class at the transferee plant: *Provided*, That if other source milk has been received by either or both handlers, the milk so transferred shall be classified so as to return the higher class utilization to producer milk;

(b) As Class I milk if transferred or diverted to a producer-handler;

(c) As Class I milk if transferred or diverted to a nonpool plant located 250 or more miles from the courthouse in the city of Duluth, Minnesota, by the shortest highway distance as determined by the market administrator;

(d) As Class I milk if transferred or diverted to a nonpool plant located less than 250 miles from the courthouse in the city of Duluth, Minnesota, unless (1) the transfer or diversion is in producer cans or in bulk, (2) the handler claims assignment as Class II in the reports submitted pursuant to § 954.30, and (3) the market administrator is permitted to audit the books and records showing the utilization of all skim milk and butterfat received at the plant, in which case the classification of all skim milk and butterfat received at such nonpool plant shall be determined and that transferred or diverted from the pool plant shall be allocated to the highest use remaining after subtracting, in series beginning with Class I, receipts at such plant (1) directly from dairy farmers who hold permits to supply Grade A milk and who the market administrator determines constitute the regular source of supply, and (2) from plants subject to other orders issued pursuant to the Act which are classified as Class I by such other order;

(e) If any skim milk or butterfat is transferred to a second nonpool plant, under paragraph (d) of this section, the same conditions of audit, allocation, and classification shall apply.

§ 954.45 Computation of milk in each class.

For each month the market administrator shall correct mathematical and other obvious errors in the monthly report submitted by each handler and shall compute the total pounds of skim milk and butterfat, respectively, in Class I milk and Class II milk for each handler: *Provided*, That when nonfat milk solids derived from nonfat dry milk, condensed skim milk, or any other product condensed from milk or skim milk, are utilized by such handler to fortify or to

reconstitute fluid milk products, the total pounds of skim milk computed for the appropriate class of use shall reflect a volume equivalent to the skim milk used to produce such nonfat milk solids.

§ 954.46 Allocation of skim milk and butterfat classified.

For each handler the market administrator shall determine the classification of milk received from producers in the following manner:

(a) Skim milk shall be allocated as follows:

(1) Subtract from the total pounds in Class II the pounds of skim milk assigned to producer milk pursuant to § 954.41(b) (4).

(2) Subtract from the pounds of skim milk remaining in each class, in series beginning with the lowest priced utilization, the pounds of skim milk in other source milk other than that to be subtracted pursuant to subparagraph (3) of this paragraph;

(3) Subtract from the pounds of skim milk remaining in each class, in series beginning with the lowest priced utilization, the pounds of skim milk contained in other source milk received from a plant at which the handling of milk is fully subject to the classification and pricing provisions of another order issued pursuant to the Act;

(4) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk contained in receipts from other pool plants, in accordance with its classification as determined pursuant to § 954.41(a);

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with the lowest priced utilization, the pounds of skim milk contained in inventory of fluid milk products on hand at the beginning of the month;

(6) Add to the pounds of skim milk remaining in Class II milk the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph; and

(7) If the remaining pounds of skim milk in both classes exceed the pounds of skim milk contained in producer milk, subtract such excess from the remaining pounds of skim milk in each class, in series beginning with the lowest-priced utilization. The amounts so subtracted shall be called "overage";

(b) Butterfat shall be allocated in accordance with the same procedure outlined for skim milk in paragraph (a) of this section; and

(c) Determine the weighted average butterfat content of the milk received from producers and allocated to Class I milk and Class II milk pursuant to paragraphs (a) and (b) of this section.

MINIMUM PRICES

§ 954.50 Basic formula price.

The basic formula price per hundredweight of milk to be used in determining class prices for each month shall be the higher of the prices per hundredweight of milk of 3.5 percent butterfat content computed by the market administrator pursuant to paragraphs (a) and (b) of this section:

(a) The average of the basic (or field) prices ascertained to have been paid per

hundredweight for milk of 3.5 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the market administrator by the Department of Agriculture or by the companies indicated below:

COMPANY AND LOCATION

Borden Co., Mt. Pleasant, Mich.
Borden Co., New London, Wis.
Borden Co., Orfordville, Wis.
Carnation Co., Oconomowoc, Wis.
Carnation Co., Richland Center, Wis.
Carnation Co., Sparta, Mich.
Pet Milk Co., Belleville, Wis.
Pet Milk Co., Coopersville, Mich.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Wayland, Mich.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(b) A price per hundredweight computed from the following formula:

(1) Multiply by 4.24 the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade AA (93-score) bulk creamery butter per pound at Chicago, as reported by the Department, during the delivery period: *Provided*, That if no price is reported for Grade AA (93-score) butter, the highest of the prices reported for Grade A (92-score) butter for that day shall be used in lieu of the price for Grade AA (93-score) butter;

(2) Multiply by 8.2 the weighted average of carlot prices per pound for spray process nonfat dry milk solids, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month, by the Department; and

(3) From the sum of the results arrived at under subparagraphs (1) and (2) of this paragraph subtract 75.2 cents and adjust to the nearest full cent.

§ 954.51 Class prices.

Subject to the provisions of §§ 954.52 and 954.53 the minimum prices per hundredweight to be paid by each handler for milk received at his plant during the month shall be as follows:

(a) *Class I milk.* The Class I price shall be the basic formula price for the preceding month plus the following amounts for the periods indicated:

Month	Amount
December through June.....	\$0.75
July through October.....	1.15
November.....	0.95

(b) *Class II milk.* The Class II price shall be equal to the basic formula price specified in § 954.50(b) for the same month.

§ 954.52 Butterfat differentials to handlers.

If the average butterfat content of the milk of any handler allocated to any class is more or less than 3.5 percent, there shall be added to the prices of milk for each class as computed pursuant to § 954.51 for each one-tenth of one percent that the average butterfat content of such milk is above 3.5 percent, or subtracted for each one-tenth of one

percent that such average butterfat content is below 3.5 percent, the average daily wholesale price of bulk creamery butter per pound as specified in § 954.51 (b) (1) multiplied by the applicable factor listed, and rounding to the nearest one-tenth cent:

(a) *Class I milk.* Multiply such price for the preceding month by 0.13; and

(b) *Class II milk.* Multiply such price for the current month by 0.12.

§ 954.53 Location differentials to handlers.

For milk which is received at a plant located more than 55 miles by the shortest highway distance, as determined by the market administrator, from the Courthouse at Duluth, Minn., or Ashland, Wis., whichever is closer, and which is classified as Class I milk, the prices computed pursuant to § 954.51(a) shall be reduced by 8 cents if such plant is located more than 55 miles but not more than 65 miles from such courthouse and by an additional 1.3 cents for each 10 miles or fraction thereof that such distance exceeds 65 miles: *Provided*, That for the purposes of calculating such differential, transfers between approved plants shall be assigned to Class I milk in a volume not in excess of that by which Class I disposition at the transferee plant exceeds the receipts from producers at such plants, such assignment to transferor plants to be made first to plants at which no differential credit is applicable and then in the sequence at which the lowest location differential credit would apply.

§ 954.54 Equivalent prices.

Whenever the provisions of this part require the market administrator to use a specific price (or prices) for milk or any milk product for the purpose of determining minimum class prices or for any other purpose and the specific price is not reported or published, the market administrator shall use a price determined by the Secretary to be equivalent to, or comparable with, the price specified.

APPLICATION OF PROVISIONS

§ 954.60 Producer-handler.

Sections 954.40 through 954.46, 954.50 through 954.54, 954.70 through 954.72, and 954.80 through 954.88 shall not apply to a producer-handler.

§ 954.61 Plants subject to other Federal orders.

The provisions of this part shall not apply to any plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless (a) more Class I milk is disposed of from such plant in the Duluth-Superior marketing area than in the marketing area regulated pursuant to such other order, or (b) the Secretary determines that the applicable order should more appropriately be determined on some other basis.

§ 954.62 Handler operating a nonpool plant.

In lieu of the payments required pursuant to §§ 954.80 to 954.88, each handler, other than a producer-handler or a handler exempt pursuant to § 954.61,

who operates a nonpool plant during the month, shall pay to the market administrator on or before the 25th day after the end of the month the amounts calculated pursuant to paragraph (a) of this section unless the handler elects, at the time of reporting pursuant to § 954.30, to pay the amounts computed pursuant to paragraph (b) of this section;

(a) The following amounts:

(1) To the producer-settlement fund, an amount equal to the value of all skim milk and butterfat disposed of as Class I milk on routes in the marketing area at the Class I price applicable at the location of such handler's plant, less the value of such skim milk and butterfat at the Class II price; and

(2) As his share of the expense of administration, the rate specified in § 954.88 with respect to Class I milk so disposed of in the marketing area.

(b) The following amounts:

(1) To the producer-settlement fund, any plus amount remaining after deducting from the value that would have been computed pursuant to § 954.70 if such handler had operated a pool plant the gross payments made by such handler for milk received during the month from Grade A dairy farmers at such plant or at a plant which serves as a supply plant; and

(2) As his share of the expense of administration, an amount equal to that which would have been computed pursuant to § 954.88 had such plant been a pool plant, except that if such is also a nonpool plant under another order issued pursuant to the Act, and his Class I sales in such other marketing area exceed those made in the Duluth-Superior marketing area, the payments due under this subparagraph shall be reduced by the amount of any administrative expense payments under the other order.

DETERMINATION OF UNIFORM PRICE

§ 954.70 Computation of the value of producer milk for each handler.

For each month, the market administrator shall compute the value of producer milk for each handler as follows:

(a) Multiply the quantity of producer milk in each class computed pursuant to § 954.46 by the applicable class price and total the resulting amounts.

(b) Add an amount computed by multiplying the difference between the Class II price for the preceding month and the Class I price for the current month by the hundredweight of skim milk and butterfat remaining in Class II milk after the calculation pursuant to § 954.46 (a) (5) and (b) of the preceding month or the hundredweight of skim milk and butterfat subtracted from Class I milk pursuant to § 954.46 (a) (5) and the corresponding step of § 954.46 (b) for the current month, whichever is less;

(c) For any skim milk or butterfat subtracted from Class I milk pursuant to § 954.46 (a) (2) and the corresponding step of § 954.46 (b), and pursuant to § 954.46 (a) (5) and the corresponding step of § 954.46 (b) which is in excess of the sum of (1) the skim milk and but-

terfat applied pursuant to paragraph (b) of this section and (2) any skim milk and butterfat subtracted from Class II pursuant to § 954.46(a)(3) and the corresponding step of § 954.46(b) of the preceding month, add an amount equal to the difference between the values of such skim milk and butterfat at the Class I price and at the Class II price: *Provided*, That such calculation shall not apply if the total receipts of producer milk at pool plants during the month are less than 110 percent of the total Class I utilization of such plants for the month.

(d) Add an amount computed by multiplying the pounds of any overage deducted from any class pursuant to § 954.46(a)(7) and the corresponding step of § 954.46(b) by the applicable class price.

§ 954.71 Computation of the uniform price.

The market administrator shall compute the uniform price per hundredweight of producer milk as follows:

(a) Combine into one total the values computed pursuant to § 954.70 for the producer milk of all handlers who submitted reports prescribed in § 954.30, and who are not in default of payments pursuant to §§ 954.80 and 954.84 for the preceding month;

(b) Subtract, if the average butterfat content of the milk included under paragraph (a) of this section is greater than 3.5 percent, or add, if such average butterfat content is less than 3.5 percent, an amount computed by multiplying the amount by which the average butterfat content of such milk varies from 3.5 percent by the butterfat differential pursuant to § 954.82 and multiply the result by the total hundredweight of such milk;

(c) Add an amount equal to the sum of the deduction to be made from producer payments for location differentials pursuant to § 954.81;

(d) Add an amount equal to one-half of the unobligated balance on hand in the producer-settlement fund;

(e) Divide the resulting amount by the total hundredweight of producer milk included under paragraph (a) of this section; and

(f) Subtract not less than 4 cents nor more than 5 cents.

The resulting figure shall be the uniform price per hundredweight of producer milk of 3.5 percent butterfat content delivered to plants, f.o.b. the marketing area.

§ 954.72 Notification of handlers.

On or before the 13th day after the end of each month, the market administrator shall mail to each handler, at his last known address, a statement showing:

(a) The amount and value of his producer milk in each class and the total thereof;

(b) The uniform price computed pursuant to § 954.71 and the location and butterfat differentials to producers as computed pursuant to §§ 954.81 and 954.82; and

(c) The amounts to be paid by such handler pursuant to §§ 954.84, 954.86, and 954.87, and 954.88 and the amount due such handler pursuant to § 954.85.

PAYMENTS

§ 954.80 Time and method of payment.

On or before the 20th day after the end of each month, each handler shall make payments as follows:

(a) To each producer from whom milk was received during the month at not less than the uniform price per hundredweight computed pursuant to § 954.71 subject to the butterfat differential computed pursuant to § 954.82 and the location adjustment computed pursuant to § 954.81 and less (1) marketing service deductions pursuant to § 954.87 and (2) other proper deductions: *Provided*, That with respect to each deduction for hauling, or for any other purpose, made from such payment, the burden shall rest upon the handler making the deduction to prove that each deduction is authorized, and properly chargeable to the producer: *And provided further*, That if by such date such handler has not received full payment from the market administrator pursuant to § 954.85, he may reduce pro rata his payment to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payment pursuant to this paragraph next following after receipt of the balance due from the market administrator;

(b) A handler who has not received on the 20th day after the end of each month the balance of the payments due him from the market administrator shall not be deemed to be in violation of paragraph (a) of this section if he reduced his payments to producers by not more than the amount of the reduction payment from the producer-settlement fund. The handler shall, however, complete such payments not later than the date for making such payments next following receipt of the balance from the market administrator.

(c) On or before the 15th day after the end of each month, to each cooperative association with respect to receipts of milk for which such cooperative association is defined as the handler not less than the value of such milk at the applicable class prices.

§ 954.81 Location differential to producers.

For milk which is received at a pool plant located more than 55 miles but not more than 65 miles by shortest highway distance, as determined by the market administrator, from the courthouse at Duluth or at Ashland, Wisconsin, whichever is closer, there should be deducted 8 cents per hundredweight and an additional 1.3 cents should be deducted for each 10 miles or fraction thereof that such distance exceeds 65 miles.

§ 954.82 Butterfat differential to producers.

The applicable uniform price to be paid producers pursuant to § 954.80 shall be increased or decreased for each one-tenth of one percent which the butterfat content of his milk is above or below 3.5 percent, respectively, by a butterfat differential equal to the average of the butterfat differentials determined pursuant to paragraphs (a) and (b) of

§ 954.52, weighted by the pounds of butterfat in producer milk in each class and the result rounded to the nearest tenth of a cent.

§ 954.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 954.62, 954.84 and 954.86, and out of which he shall make payments to handlers pursuant to §§ 954.85 and 954.86: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

§ 954.84 Payments to the producer-settlement fund.

On or before the 15th day after the end of each month, each handler shall pay to the market administrator any amount by which the value of his producer milk, as computed pursuant to § 954.70, for such month, is greater than the amount owed by him for such milk at the appropriate uniform price determined pursuant to § 954.80.

§ 954.85 Payment out of the producer-settlement fund.

On or before the 17th day after the end of each month the market administrator shall pay to each handler any amount by which the value of his producer milk, computed pursuant to § 954.80, for such month is less than the amount owed by him for such milk at the appropriate uniform prices adjusted by the producer butterfat and location differentials. If at such time the balance in the producer-settlement fund is insufficient to make all payments required by this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 954.86 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount due, and payment thereof shall be made on or before the next date for making payments set forth in the provision under which such error occurred.

§ 954.87 Marketing services.

(a) *Deductions*. Except as set forth in paragraph (b) of this section, each handler, in making payments to producers pursuant to § 954.80, with respect to all milk received from each producer at a plant not operated by a cooperative association qualified under paragraph (b) of this section of which such producer is a member, shall deduct an amount not exceeding 3 cents per hundredweight (the exact amount to be determined by the market administrator subject to review by the Secretary) from the payments made direct to such producers and such handler shall pay

such deductions to the market administrator on or before the 15th day after the end of such month. Such moneys shall be used by the market administrator to provide market information and to verify the accuracy of weights, sampling and testing of milk received from such producers.

(b) In the case of milk of producers who are members of a cooperative association which is actually performing the services described in paragraph (a) of this section, which is received at a plant not operated by such cooperative association, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from the payments to be made direct to such producers pursuant to § 954.80, as are authorized by such producers and, on or before the 15th day after the end of such month, pay such deductions to such cooperative association.

§ 954.88 Expense of administration.

As his pro rata share of the expense of the administration of this part, each handler shall pay to the market administrator, on or before the 15th day after the end of each month, an amount not exceeding 4 cents per hundredweight with respect to (a) all milk received by him during such month from producers including milk of such handler's own production, (b) other source milk received at a pool plant and classified as Class I, and (c) the quantities of milk at handlers' nonpool plants as specified in § 954.62.

§ 954.89 Termination of obligations.

The provisions of this section shall apply to any obligation under this part for the payment of money irrespective of when such obligation arose.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

- (1) The amount of the obligation;
 - (2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and
 - (3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for it is to be paid.
- (b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of

such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this order to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or set off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

MISCELLANEOUS PROVISIONS

§ 954.90 Effective time.

The provisions of this part shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to § 954.91.

§ 954.91 Suspension or termination.

The Secretary may suspend or terminate this part or any provision thereof whenever he finds that it obstructs or does not tend to effectuate the declared policy of the Act. This part shall, in any event, terminate whenever the provisions of the Act authorizing it cease to be in effect.

§ 954.92 Continuing obligations.

If, upon the suspension or termination of any or all provisions of this part, there are any obligations arising under it, the final accrual or ascertainment of which requires further acts by any person, such further acts shall be performed notwithstanding such suspension or termination.

§ 954.93 Liquidation.

Upon the suspension or termination of any or all provisions of this part the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected over and above the amount necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to

the contributing handlers and producers in an equitable manner.

§ 954.94 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

§ 954.95 Separability of provisions.

If any provision of this part, or its application to any person or circumstances, is held invalid, the application of such provision, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

[F.R. Doc. 60-601; Filed, Jan. 20, 1960; 8:53 a.m.]

[7 CFR Part 989]

HANDLING OF RAISINS PRODUCED FROM RAISIN VARIETY GRAPES GROWN IN CALIFORNIA

Notice of Proposed Expenses of the Raisin Administrative Committee for 1959-60 Crop Year and Rate of Assessment for Such Crop Year

Consideration is being given to the approval of proposed expenses that may be incurred by the Raisin Administrative Committee for the maintenance and functioning of the committee and the Raisin Advisory Board for the 1959-60 crop year and the fixing of the rate of assessment for that crop year. Such action is to be taken pursuant to §§ 989.79 and 989.80 of Marketing Agreement No. 109, as amended, and Order No. 89, as amended (7 CFR Part 989), regulating the handling of raisins produced from raisin variety grapes grown in California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The committee has recommended, for the 1959-60 crop year beginning September 1, 1959, an aggregate amount of \$112,000 for such expenses and a rate of assessment of 70 cents per ton of assessable tonnage raisins—free tonnage raisins acquired by handlers and any reserve tonnage raisins sold to them by the committee pursuant to § 989.67. The assessable tonnage is estimated at 160,000 tons for budgetary purposes.

Consideration will be given to any data, views, or arguments pertaining to the foregoing which are filed in triplicate with the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D.C., and received not later than the close of business on the seventh day after publication of this notice in the FEDERAL REGISTER.

Dated: January 18, 1960.

G. R. GRANGE,
Acting Director,
Fruit and Vegetable Division.

[F.R. Doc. 60-602; Filed, Jan. 20, 1960; 8:54 a.m.]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR (1954) Part 48]

RADIO AND TELEVISION SETS, PHONOGRAPHS, PHONOGRAPH RECORDS, AND MUSICAL INSTRUMENTS

Notice of Hearing on Proposed Regulations

Proposed regulations under sections 4141, 4142, 4143 and 4151 of the Internal Revenue Code of 1954, relating to radio and television sets, phonographs, phonograph records, and musical instruments, were published in the *FEDERAL REGISTER* for December 19, 1959.

A public hearing on these proposed regulations will be held on Friday, February 12, 1960, at 10:00 a.m., e.s.t., in Room 3313, Internal Revenue Building, Twelfth and Constitution Avenue NW., Washington, D.C. Persons who plan to attend the hearing are requested to so notify the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., by February 9, 1960.

[SEAL] MAURICE LEWIS,
Director, Technical Planning
Division, Internal Revenue
Service.

[F.R. Doc. 60-611; Filed, Jan. 20, 1960;
8:55 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Part 600]

[Airspace Docket No. 59-FW-57]

FEDERAL AIRWAYS

Modification

Pursuant to the authority delegated to me by the Administrator (§ 409.13, 24 F.R. 3499), notice is hereby given that the Federal Aviation Agency is considering an amendment to § 600.6222 of the regulations of the Administrator the substance of which is stated below.

VOR Federal airway No. 222 extends in part from Norcross, Ga., to Toccoa, Ga. The Federal Aviation Agency has under consideration redesignation of the segment of Victor 222 from the Norcross, Ga., VOR to the Toccoa, Ga., VOR via the intersection of the Norcross, Ga., VOR 026° and the Toccoa, Ga., VOR 230° True radials. This modification is part of a plan to revise and increase air traffic flow capabilities into and from Atlanta, Ga., terminal area. This modification would serve primarily as a northeast departure route for aircraft departing the Atlanta terminal area. The control areas associated with Victor 222 are so designated that they would automatically conform to the modified airway. Accordingly, no amendment relating to such control areas would be necessary.

If this action is taken, the Norcross, Ga., to Toccoa, Ga., segment of VOR Federal airway No. 222 would be redesignated via the intersection of the Norcross, Ga., VOR 026° and the Toccoa, Ga., VOR 230° True radials.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Division, Federal Aviation Agency, P.O. Box 1689, Fort Worth 1, Tex. All communications received within forty-five days after publication of this notice in the *FEDERAL REGISTER* will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under sections 307(a) and 313(a) of the Federal Aviation Act of 1958 (72 Stat. 749, 752; 49 U.S.C. 1348, 1354).

Issued in Washington, D.C., on January 14, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60-576; Filed, Jan. 20, 1960;
8:48 a.m.]

[14 CFR Parts 600, 601]

[Airspace Docket No. 59-LA-14]

FEDERAL AIRWAYS AND CONTROL AREAS

Revocation

Pursuant to the authority delegated to me by the Administrator (§ 409.13, 24 F.R. 3499), notice is hereby given that the Federal Aviation Agency is considering an amendment to Parts 600 and 601 of the regulations of the Administrator, the substance of which is stated below.

VOR Federal airway No. 247 presently extends from Scottsbluff, Nebr., to Crazy Woman, Wyo. The Federal Aviation Agency has under consideration revocation of this airway. The Federal Aviation Agency IFR peak day airway traffic survey for the period June 30, 1958, to July 1, 1959, shows no aircraft movements on the Scottsbluff-Douglas, Wyo., segment of this airway and less than five on the Douglas-Crazy Woman segment. On the basis of this survey, it appears that retention of this airway and its associated control areas is unjustified as an assignment of airspace and that revocation thereof would be in the public interest.

If this action is taken, VOR Federal airway No. 247 and its associated control areas would be revoked.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Division, Federal Aviation Agency, 5651 West Manchester Avenue, P.O. Box 90007, Airport Station, Los Angeles 45, Calif. All communications received within forty-five days after publication of this notice in the *FEDERAL REGISTER* will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under sections 307(a) and 313(a) of the Federal Aviation Act of 1958 (72 Stat. 749, 752; 49 U.S.C. 1348, 1354).

Issued in Washington, D.C., on January 15, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60-577; Filed, Jan. 20, 1960;
8:48 a.m.]

[14 CFR Parts 600, 601]

[Airspace Docket No. 59-AN-1]

FEDERAL AIRWAYS AND CONTROL AREAS

Modification

Pursuant to the authority delegated to me by the Administrator (§ 409.13, 24 F.R. 3499), notice is hereby given that the Federal Aviation Agency is considering an amendment to §§ 600.679 and 601.679 of the regulations of the Administrator, the substance of which is stated below.

Blue Federal airway No. 79 presently extends, in part, from the intersection of the south course of the Annette Island, Alaska, radio range and the United States/Canadian border to Annette Island. The south course of the Annette Island radio range provides navigational guidance for this segment of Blue 79. It is proposed to realign the south course of the Annette Island radio range to overlie the segment of Amber Federal airway No. 15 between Annette

Island and Stephens Island, British Columbia, Canada, to improve the navigational guidance for the high volume of air traffic using this route. Concurrently with the realignment of the south course of the Annette Island radio range, the Federal Aviation Agency has under consideration modifying Blue 79 by redesignating it from Annette Island to the United States/Canadian border via the 183° bearing from Annette Island radio range to the Sandspit radio range. This would provide a direct alignment from Annette Island to Sandspit. This modified segment of Blue 79 would serve as an additional departure route for aircraft departing Annette Island southbound. The Department of Transport of the Canadian Government concurs with this proposal and agrees to redesignate the Canadian portion of Blue 79 between Sandspit and Annette Island.

If this action is taken, the segment of Blue Federal airway No. 79 and its associated control areas from the United States/Canadian border to Annette Island, Alaska, would be redesignated via a direct alignment between the Sandspit, British Columbia, Canada, radio range and the Annette Island radio range, and the south course of the Annette Island radio range would be realigned to overlap the Amber Federal airway No. 15.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Regional Manager, Federal Aviation Agency, P.O. Box 440, Anchorage, Alaska. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Manager, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Manager.

This amendment is proposed under sections 307(a) and 313(a) of the Federal Aviation Act of 1958 (72 Stat. 749, 752; 49 U.S.C. 1348, 1354).

Issued in Washington, D.C., on January 15, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60-578; Filed, Jan. 20, 1960; 8:48 a.m.]

[14 CFR Parts 600, 601]

[Airspace Docket No. 59-KC-83]

FEDERAL AIRWAYS AND CONTROL AREAS

Modification

Pursuant to the authority delegated to me by the Administrator (§ 409.13, 24 F.R. 3499), notice is hereby given that the Federal Aviation Agency is considering an amendment to §§ 600.6084, 601.6084 and 600.6010 of the regulations of the Administrator, the substance of which is stated below.

VOR Federal airway No. 84 presently extends in part from Hinckley, Ill., to Northbrook, Ill. VOR Federal airway No. 10 presently extends in part from Bradford, Ill., to Naperville, Ill. The Federal Aviation Agency is considering extending Victor 84 and associated control areas southwestward from Hinckley Intersection (intersection of the Joliet, Ill., VOR 316° and the Northbrook VOR 229° True radials) to the Bradford VOR, and realigning Victor 10 from the Naperville VOR to the Bradford VOR via the Naperville VOR 254° and the Bradford VOR 050° True radials. The extension of Victor 84 from the Hinckley Intersection to the Bradford VOR would provide a transition airway for civil jet traffic arriving and departing O'Hare International Airport, Chicago, Ill., from and to the southwest. It would also provide a direct airway for aircraft operating between Northbrook and Bradford. The realignment of Victor 10 to coincide with Victor 84 between the intersection of the Bradford VOR 050° and the Naperville VOR 254° True radials and the Bradford VOR would reduce the distance between Chicago and Bradford via Victor 10 and would also simplify the airway structure. The control areas associated with Victor 10 are so designated that they would automatically conform to the modified airway. Accordingly, no amendment relating to such control areas is necessary.

If this action is taken, VOR Federal airway No. 84 and associated control areas would be designated to extend in part from Bradford, Ill., to Northbrook, Ill. The segment of VOR Federal airway No. 10 between Bradford, Ill., and Naperville, Ill., would be redesignated via the Bradford VOR 050° and the Naperville VOR 254° True radials.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Division, Federal Aviation Agency, 4825 Troost Avenue, Kansas City 10, Mo. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C.

Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under sections 307(a) and 313(a) of the Federal Aviation Act of 1958 (72 Stat. 749, 752; 49 U.S.C. 1348, 1354).

Issued in Washington, D.C., on January 15, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60-579; Filed, Jan. 20, 1960; 8:48 a.m.]

[14 CFR Part 601]

[Airspace Docket No. 59-NY-41]

CONTROL ZONES

Modification

Pursuant to the authority delegated to me by the Administrator (§ 409.13, 24 F.R. 3499), notice is hereby given that the Federal Aviation Agency is considering an amendment to § 601.2090 of the regulations of the Administrator, the substance of which is stated below.

The Columbus, Ohio, control zone is presently described as within a 5-mile radius of the Port Columbus Municipal Airport, and within a 5-mile radius of the Lockbourne, Ohio, AFB, including the airspace within 2 miles either side of a direct line extending from the Columbus radio range station to the Lockbourne AFB and within 2 miles either side of the extended centerline of the Lockbourne AFB runway 23 extending to a point 6.5 miles northeast of the end of the runway. The Federal Aviation Agency has under consideration modification of the Columbus control zone to include an extension to the east within 2 miles either side of the Port Columbus ILS localizer east course extending from the Port Columbus 5-mile radius zone to the Port Columbus ILS Outer Marker. This proposed extension would provide protection to aircraft conducting instrument approaches to Port Columbus Airport utilizing the east course of the ILS localizer. Concurrently, it is proposed to redescribe the extension to the northeast of Lockbourne AFB to be based on the Lockbourne ILS localizer northeast course and outer marker.

If this action is taken, the Columbus, Ohio, control zone (601.2090) would be designated within a 5-mile radius of the Port Columbus Municipal Airport (latitude 39°59'34" N., longitude 82°52'50" W.) and within a 5-mile radius of the Lockbourne, Ohio, Air Force base (lati-

tude 39°48'51" N., longitude 82°55'56" W.) including the airspace within 2 miles either side of a direct line extending from the Columbus radio range station to the Lockbourne AFB, within 2 miles either side of the Port Columbus ILS localizer east course extending from the Port Columbus Airport 5-mile radius zone to the Port Columbus ILS outer marker, and within 2 miles either side of the Lockbourne AFB ILS localizer north-east course from the Lockbourne AFB 5-mile radius zone to the Lockbourne AFB ILS outer marker.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Division, Federal Aviation Agency, Federal Building, New York International Airport, Jamaica 30, N.Y. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under sections 307(a) and 313(a) of the Federal Aviation Act of 1958 (72 Stat. 749, 752; 49 U.S.C. 1348, 1354).

Issued in Washington, D.C., on January 15, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60-575; Filed, Jan. 20, 1960;
8:48 a.m.]

[14 CFR Part 602]

[Airspace Docket No. 59-WA-142]

CODED JET ROUTES

Revocation

Pursuant to the authority delegated to me by the Administrator (§ 409.13, 24 F.R. 3499), notice is hereby given that the Federal Aviation Agency is considering an amendment to Part 602 of the regulations of the Administrator, the substance of which is stated below.

VOR/VORTAC jet route No. 10 presently extends from Los Angeles, Calif., to New York, N.Y. The Federal Aviation Agency has under consideration the rev-

ocation of this jet route in its entirety. Jet Route 10-V duplicates services provided by VOR/VORTAC jet route No. 60 between Los Angeles and Denver Colo.; and duplicates services provided by VOR/VORTAC jet route No. 80 between Denver and New York. Revocation of the route would reduce the complexity of the high altitude route system. Therefore, it appears that the retention of this coded jet route is unnecessary and that revocation thereof would be in the public interest.

If this action is taken, VOR/VORTAC jet route No. 10 between Los Angeles and New York would be revoked.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Chief, Airspace Utilization Division. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C.

This amendment is proposed under sections 307(a) and 313(a) of the Federal Aviation Act of 1958 (72 Stat. 749, 752; 49 U.S.C. 1348, 1354).

Issued in Washington, D.C., on January 15, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60-573; Filed, Jan. 20, 1960;
8:47 a.m.]

[14 CFR Part 602]

[Airspace Docket No. 59-WA-413]

CODED JET ROUTES

Modification

Pursuant to the authority delegated to me by the Administrator (§ 409.13, 24 F.R. 3499), notice is hereby given that the Federal Aviation Agency is considering an amendment to § 602.122 of the regulations of the Administrator, the substance of which is stated below.

L/MF jet route No. 22 presently extends, in part, from Palacios, Texas to Lake Charles, La. The Federal Aviation Agency has under consideration modification of this route segment by realigning it via the Galveston, Texas nondirectional radio beacon. This minor realignment would provide more precise

navigational guidance between Palacios and Lake Charles.

If this action is taken, the segment of L/MF jet route No. 22 under consideration would extend from Palacios, Texas via Galveston, Texas to Lake Charles, La.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Chief, Airspace Utilization Division. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C.

This amendment is proposed under sections 307(a) and 313(a) of the Federal Aviation Act of 1958 (72 Stat. 749, 752; 49 U.S.C. 1348, 1354).

Issued in Washington, D.C., on January 15, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60-574; Filed, Jan. 20, 1960;
8:47 a.m.]

NOTICES

DEPARTMENT OF THE TREASURY

Office of Treasurer of the United States

[Revision 3]

ORDER OF SUCCESSION OF PERSONS TO ACT AS TREASURER OF THE UNITED STATES

Under the authority conferred upon me by Treasury Department Order No. 129, Revision No. 2, dated April 22, 1955: *It is hereby ordered*, That the following officers in the Office of the Treasurer of the United States and the Bureau of the Public Debt in the order of succession enumerated shall act as Treasurer during the absence or disability of the Treasurer.

Deputy Treasurer.
Assistant Deputy Treasurer.
Technical Assistant to the Deputy Treasurer.
Chief, General Accounts Division.
Director, Parkersburg Office, Bureau of the Public Debt.

In the event of an enemy attack on the continental United States, and in the absence of the Treasurer of the United States, the senior officer, in descending order in the foregoing line of succession, present at the site of the operations of the Treasurer of the United States shall act as Treasurer. If none of such officers is present at the site of the Treasurer's operations it is hereby ordered that the officer acting as District Director, Internal Revenue Service, at the city at which the Treasurer's operations are re-established shall act as Treasurer of the United States.

In the event of an enemy attack on the continental United States and the occurrence of a vacancy in the Office of the Treasurer, the Treasurer's functions shall be deemed to have been transferred, pursuant to the above described Treasury Department Order, to the Deputy Treasurer, and in the event of a vacancy in the Office of the Deputy Treasurer, to the senior officer, in descending order in the following line of succession, present at the site of the operations of the Treasurer of the United States.

Assistant Deputy Treasurer.

Technical Assistant to the Deputy Treasurer.

Chief, General Accounts Division.

Director, Parkersburg Office, Bureau of the Public Debt.

If none of such officers is present at the site of the Treasurer's operations, the Treasurer's functions shall be deemed to have been transferred, pursuant to the aforesaid order, to the officer acting as District Director, Internal Revenue Service at the city at which the Treasurer's operations are reestablished.

This order supersedes the order of succession dated September 4, 1958.

Dated: January 18, 1960.

[SEAL] IVY BAKER PRIEST,
Treasurer of the United States.

[F.R. Doc. 60-613; Filed, Jan. 20, 1960;
8:55 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

CALIFORNIA

Notice of Amendment and Partial Termination of Proposed Withdrawal and Reservation of Land

JANUARY 12, 1960.

Notice of an application Serial No. Sacramento 053883, for withdrawal and reservation of lands was published as Federal Register Document No. 57-4177 on pages 3640 and 3641 of the issue for May 23, 1957. Notice of correction of the land description was published as Federal Register Document No. 57-5608 on pages 4889 and 4890 of the issue for July 11, 1957. The description of the lands involved in the proposed withdrawal application is hereby amended to read as follows:

MOUNT DIABLO MERIDIAN, CALIFORNIA

T. 3 S., R. 19 E.,

Sec. 13: That portion of Lot 16 lying north of the northerly right-of-way line of California Highway No. 140.

T. 3 S., R. 20 E.,

Sec. 16: $N\frac{1}{2}NW\frac{1}{4}$, $N\frac{1}{2}SE\frac{1}{4}NW\frac{1}{4}$, $S\frac{1}{2}N\frac{1}{2}NE\frac{1}{4}SW\frac{1}{4}$, $S\frac{1}{2}NE\frac{1}{4}SW\frac{1}{4}$;

Sec. 17: $S\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}$, $N\frac{1}{2}SE\frac{1}{4}$;

Sec. 18: $S\frac{1}{2}$ of Lot 3, that portion of Lot 4 lying north of the northerly right-of-way line of California Highway No. 140, $SE\frac{1}{4}NE\frac{1}{4}$, $NE\frac{1}{4}NW\frac{1}{4}$, that portion of $SE\frac{1}{4}SW\frac{1}{4}$ lying north of the northerly right-of-way line of California Highway No. 140 (excepting the North Barium Lode Claim, M. S. No. 5281A and B), and $SW\frac{1}{4}SE\frac{1}{4}$ (excepting the Barium No. 2 Lode Claim, M. S. No. 5974, the East Baryte Lode Claim, M. S. No. 5598, and the North Barium Lode Claim, M. S. No. 5281A and B);

Sec. 19: Any portion of Lot 1 which may lie north of the northerly right-of-way line of California Highway No. 140, those portions of $NW\frac{1}{4}NE\frac{1}{4}$ and $NE\frac{1}{4}NW\frac{1}{4}$ lying north or west of the northerly and westerly right-of-way line of California Highway No. 140 (excepting the North Barium Lode Claim, M. S. No. 5281A and B).

The areas described aggregate approximately 500 acres more or less of public lands within the Stanislaus and Sierra National Forests in Mariposa County.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the lands added to the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, Room 1000, California Fruit Building, 4th and J Streets, Sacramento 14, California.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands added to the application are:

MOUNT DIABLO MERIDIAN, CALIFORNIA

T. 3 S., R. 19 E.,

Sec. 13: That portion of Lot 16 lying north of the northerly right-of-way line of California Highway No. 140.

T. 3 S., R. 20 E.,

Sec. 17: $S\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}$;

Sec. 18: $NE\frac{1}{4}NW\frac{1}{4}$, $S\frac{1}{2}$ of Lot 3.

The applicant agency has canceled its application insofar as it involved the lands described below. Therefore, pursuant to the regulations contained in 43 CFR Part 295, such lands are relieved of the segregative effect of the above-mentioned application at 10:00 a.m., February 11, 1960.

The lands terminated are:

MOUNT DIABLO MERIDIAN, CALIFORNIA

T. 3 S., R. 20 E.,

Sec. 18: Those portions of Lot 4 and $SE\frac{1}{4}SW\frac{1}{4}$ lying south of the northerly right-of-way line of California Highway No. 140, those portions of the North Barium Lode Claim, M. S. No. 5281A and B extending into the $SE\frac{1}{4}SW\frac{1}{4}$, those portions of the North Barium Lode Claim, M. S. No. 5281A, East Baryte Lode Claim, M. S. No. 5598, and Barium No. 2 Lode Claim, M. S. No. 5974 extending into the $SW\frac{1}{4}SE\frac{1}{4}$; and the $SE\frac{1}{4}SE\frac{1}{4}$;

Sec. 19: Any portion of Lot 1 which may lie south of the northerly right-of-way line of California Highway No. 140, those portions of the $NW\frac{1}{4}NE\frac{1}{4}$ and

$NE\frac{1}{4}NW\frac{1}{4}$ lying south or east of the northerly and westerly right-of-way line of California Highway No. 140, those portions of the North Barium Lode Claim, M. S. No. 5281A and B extending into the $NE\frac{1}{4}NW\frac{1}{4}$, and that portion of the North Barium Lode Claim, M. S. No. 5281A extending into the $NW\frac{1}{4}NE\frac{1}{4}$.

[SEAL]

WALTER E. BECK,
Manager, Land Office,
Sacramento.

[F.R. Doc. 60-588; Filed, Jan. 20, 1960;
8:51 a.m.]

ALASKA

Notice of Proposed Withdrawal and Reservation of Lands

JANUARY 8, 1960.

The Federal Aviation Agency has filed an application, Serial Number 042420 for the withdrawal of the lands described below, from all forms of appropriation under the Public land laws including the mining and mineral leasing laws but excepting the disposal of materials under the Materials Act. The applicant desires the land for use as an air navigation aid facility site.

For a period of 60 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, Anchorage Operations Office, mailing: 334 East Fifth Avenue, Anchorage, Alaska.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent of each interested party of record.

The lands involved in the application are:

T. 26 N., R. 4 W., S.M.,

Sec. 30: $E\frac{1}{2}$ of Lot 5, $SE\frac{1}{4}SW\frac{1}{4}$, $SW\frac{1}{4}SE\frac{1}{4}$;

Sec. 31: $E\frac{1}{2}$ of Lot 1, $E\frac{1}{2}$ of $NW\frac{1}{4}$, $W\frac{1}{2}$ of $NW\frac{1}{4}NE\frac{1}{4}$, $NE\frac{1}{4}$ and $S\frac{1}{2}$ of Lot 2, $N\frac{1}{2}$ and $SW\frac{1}{4}$ of Lot 3, $N\frac{1}{2}$ of $NE\frac{1}{4}SW\frac{1}{4}$.

Containing approximately 292.46 acres.

L. T. MAIN,
Operations Supervisor.

[F.R. Doc. 60-589; Filed, Jan. 20, 1960;
8:51 a.m.]

CALIFORNIA

Notice of Proposed Withdrawal and Reservation of Lands for Use by the Bureau of Sport Fisheries and Wildlife in Connection With the Havasu Lake National Wildlife Refuge

JANUARY 14, 1960.

In Federal Register Doc. 59-11125, appearing at page 10988 of the issue for December 30, 1959, the following change should be made:

In the first column under T. 7 N., R. 24 E., S.B.M., Sec. 8 should read:

Sec. 8, Lot 2, NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$,
N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$,
S $\frac{1}{2}$ SE $\frac{1}{4}$.

MALCOLM S. ALLEN,
Manager.

[F.R. Doc. 60-628; Filed, Jan. 20, 1960;
8:59 a.m.]

DEPARTMENT OF AGRICULTURE

Commodity Stabilization Service

CIGAR-BINDER (TYPES 51 AND 52) TOBACCO AND CIGAR-FILLER AND BINDER (TYPES 42, 43, 44, 53, 54, AND 55) TOBACCO

Referenda

Notice is hereby given that on February 11, 1960, referenda will be held of farmers engaged in the production in 1959 of cigar-binder (types 51 and 52) tobacco, and of cigar-filler and binder (types 42, 43, 44, 53, 54 and 55) tobacco, pursuant to the provisions of the Agricultural Adjustment Act of 1938, as amended. Notice that consideration would be given to establishing a date for holding the referenda was given in 24 F.R. 8237. The purpose of the referenda is to determine whether the farmers voting favor national marketing quotas for each of the 1960-61, 1961-62 and 1962-63 marketing years for each of such kinds of tobacco. The referenda will be conducted in accordance with the provisions of the Act and the Regulations Governing the Holding of Referenda on Marketing Quotas (23 F.R. 3432, 7285).

In order that arrangements for holding the referenda may be made in an orderly manner and as much advance notice as possible be given to the date of the referenda, it is essential that this notice be made effective as soon as possible. Accordingly, it is hereby determined and found that compliance with the 30-day effective date requirement of section 4 of the Administrative Procedure Act is impracticable and contrary to the public interest and this notice shall be effective upon filing of this document with the Director, Division of the FEDERAL REGISTER.

Issued at Washington, D.C., this 15th day of January 1960.

TRUE D. MORSE,
Acting Secretary.

[F.R. Doc. 60-605; Filed, Jan. 20, 1960;
8:54 a.m.]

DEPARTMENT OF COMMERCE

Federal Maritime Board

CUBA, MEXICO AND WEST INDIES STEAMSHIP CO., INC., ET AL.

Notice of Agreements Filed With the Board for Approval

Notice is hereby given that the following described agreements have been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733, 46 U.S.C. 814):

(1) Agreement No. 8428, between Cuba, Mexico and West Indies Steamship Company, Inc., and Alcoa Steamship Company, Inc., covers a through billing arrangement in the trade from ports in Mexico to ports in Puerto Rico, with transshipment at New York or Baltimore.

(2) Agreement No. 8429, between Cuba, Mexico and West Indies Steamship Company, Inc., and Alcoa Steamship Company, Inc., covers a through billing arrangement in the trade from ports in Mexico to ports in the Virgin Islands, with transshipment at New York or Baltimore.

(3) Agreement No. 8437, between the carriers comprising the Gulf West Africa Line joint service, and Alcoa Steamship Company, Inc., covers a through billing arrangement in the trade from West Africa to Puerto Rico, with transshipment at New Orleans or Mobile.

Interested parties may inspect these agreements and obtain copies thereof at the Regulation Office, Federal Maritime Board, Washington, D.C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to any of these agreements and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

By order of the Federal Maritime Board.

Dated: January 18, 1960.

JAMES L. PIMPER,
Secretary.

[F.R. Doc. 60-567; Filed, Jan. 20, 1960;
8:45 a.m.]

[Docket No. 882]

UNAPPROVED SECTION 15 AGREEMENTS; SOUTH AFRICAN TRADE

Notice of Investigation, of Hearing, and of Prehearing Conference

On January 7, 1960, the Federal Maritime Board entered the following order:

"It appearing from information before the Board that agreements within the contemplation of section 15 of the Shipping Act, 1916 (46 U.S.C. 814), fixing or regulating transportation rates or fares; or controlling, regulating, preventing, or destroying competition; or pooling or apportioning of traffic; or regulating the number and character of sailings; or in other manners providing for exclusive, preferential or cooperative working arrangements; may have been made during the period 1954 through 1958 affecting trade between the United States and South and East Africa by:

Louis Dreyfus Lines—joint service of Louis Dreyfus et cie, Burles Markes, Ltd.

Farrell Lines Incorporated.

Lykes Bros. Steamship Co., Inc.

Nedlloyd Line—joint service of N.V. Stoomvaart Maatschappij "Nederland" Koninklijke Rotterdamsche Lloyd, N.V.

Robin Line (Division of Moore-McCormack).

South African Marine Corporation Ltd.; and

"It further appearing that the purported agreements referred to above

have not been filed for approval under said section 15 nor approved thereunder and may have been carried out;

"It is ordered, That an investigation is hereby instituted to determine whether any of the persons named above have carried out before approval under said section 15 any agreements requiring such approval, in violation of said section 15; and

"It is further ordered, That all persons named above are made respondents in this proceeding which is to be set for hearing before an examiner from the Hearing Examiners' Office at a time and place to be announced; and

"It is further ordered, That a copy of this order be served on each of the respondents and published in the FEDERAL REGISTER."

Notice is hereby given that, in accordance with Rule 6(d) of the Board's rules of practice and procedure, 46 CFR § 201.94, a prehearing conference in this proceeding will be held before Examiner C. B. Gray on February 10, 1960, at 10 a.m., in Room 4519, New General Accounting Office Building, 441 G Street NW., Washington, D.C. Thereafter a public hearing will be scheduled at a date and place to be announced. Said hearing will be conducted in accordance with the above rules, and a recommended decision will be issued by the examiner.

All persons (including individuals, corporations, associations, firms, partnerships, and public bodies), having an interest in this proceeding and desiring to intervene therein, should notify the Secretary, Federal Maritime Board, promptly and file petitions for leave to intervene in accordance with Rule 5(n), 46 CFR sec. 201.74, of the above rules.

Dated: January 18, 1960.

By order of the Federal Maritime Board.

JAMES L. PIMPER,
Secretary.

[F.R. Doc. 60-568; Filed, Jan. 20, 1960;
8:45 a.m.]

[Docket No. 883]

UNAPPROVED SECTION 15 AGREEMENTS; WEST COAST SOUTH AMERICA TRADE

Notice of Investigation, of Hearing, and of Prehearing Conference

On January 7, 1960, the Federal Maritime Board entered the following order:

"It appearing from information before the Board that an agreement or agreements within the contemplation of section 15 of the Shipping Act, 1916 (46 U.S.C. 814), fixing or regulating transportation rates or fares; or controlling, regulating, preventing, or destroying competition; or in other manners providing for exclusive, preferential or cooperative working arrangements; may have been made during 1957 or prior thereto affecting trade from the United States Atlantic, Gulf and Pacific ports to the West Coast of South America by the Atlantic and Gulf/West Coast of

South America Conference, and/or its member lines, namely:

Compania Colombiana de Navegacion Maritima, S.A. (Coldemar Line).
Compania Sud Americana de Vapores (Chilean Line).
Flota Mercante Grancolombiana, S.A.
Grace Line Inc. (Grace Line).
Gulf & South American Steamship Co., Inc.
Rederiet Ocean A/S and West Coast Line, Inc. (West Coast Line).

and the Pacific/West Coast of South America Conference, and/or its member lines, namely:

Compagnie Generale Transatlantique (French Line).
Compania Chilena de Navegacion Inter-oceanica.
Compania Naviera Independencia, S.A. (Independence Line).
Compania Naviera Rosaria S.A. (Peru Line).
Flota Mercante Grancolombiana, S.A.
Grace Line Inc. (Grace Line).
Kawasaki Kisen Kaisha, Ltd.
Nippon Yusen Kaisha, Ltd.
N.V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij "Holland-Amerika Lijn".
Royal Mail Line, Ltd.
Westfal-Larsen & Company, A/S (Westfal-Larsen Company Line).
Wiel & Amundsen A/S (Latin America Line).

"It further appearing that the purported agreement or agreements referred to above have not been filed for approval under said section 15 nor approved thereunder and may have been carried out;

"It is ordered, That an investigation is hereby instituted to determine whether any of the persons named above have carried out before approval under said section 15 any agreements requiring such approval, in violation of said section 15; and

"It is further ordered, That all persons named above are made respondents in this proceeding which is to be set for hearing before an examiner from the Hearing Examiners' Office at a time and place to be announced; and

"It is further ordered, That a copy of this order be served on each of the respondents and published in the FEDERAL REGISTER."

Notice is hereby given that, in accordance with Rule 6(d) of the Board's rules of practice and procedure, 46 CFR § 201.94, a prehearing conference in this proceeding will be held before Examiner C. W. Robinson on February 9, 1960, at 10 a.m., in Room 4458, New General Accounting Office Building, 441 G Street NW., Washington, D.C. Thereafter a public hearing will be scheduled at a date and place to be announced. Said hearing will be conducted in accordance with the above rules, and a recommended decision will be issued by the examiner.

All persons (including individuals, corporations, associations, firms, partnerships, and public bodies), having an interest in this proceeding and desiring to intervene therein, should notify the Secretary, Federal Maritime Board, promptly and file petitions for leave to intervene in accordance with Rule 5(n), 46 CFR § 201.74, of the above rules.

Dated: January 18, 1960.

No. 14—9

By order of the Federal Maritime Board.

JAMES L. PIMPER,
Secretary.

[F.R. Doc. 60-569; Filed, Jan. 20, 1960;
8:46 a.m.]

[Docket No. 884]

UNAPPROVED SECTION 15 AGREEMENTS; JAPAN, KOREA, OKINAWA TRADE

Notice of Investigation, of Hearing, and of Prehearing Conference

On January 7, 1960, the Federal Maritime Board entered the following order: "It appearing from information before the Board that agreements within the contemplation of section 15 of the Shipping Act, 1916 (46 U.S.C. 814), fixing or regulating transportation rates or fares, or controlling, regulating, preventing or destroying competition, or in other manners providing for exclusive, preferential or cooperative working arrangements, may have been made during the period 1953 through early 1958 affecting the trade from Japan, Korea and Okinawa to U.S. Atlantic and Gulf ports by—

Barber Wilhelmsen—Joint Service of: Wilhelmsens Dampskibsselskab. A/S Den Norske Afrika-Og Australielinie. A/S Tonsberg. A/S Tankfart I. A/S Tankfart IV. A/S Tankfart V. A/S Tankfart VI. Skibsaktieselskapet Varild. Skibsaktieselskapet Marine. Aktieselskabet Glitre. Dampskibssinteressensskabet Garonne. Aktieselskabet Standard. Fearnley & Egers Befragtningsforretning A/S. Skibsaktieselskapet Sangstad. Skibsaktieselskapet Solstad. Skibsaktieselskapet Siljestad. Dampskibssinteressensskabet International. Skibsaktieselskapet Mandeville. Skibsaktieselskapet Goodwill. A. P. Moller-Maersk Line—Joint Service of: Aktieselskabet Dampskibsselskab Svendborg. Dampskibsselskab af 1912 Aktieselskab. United States Lines Company (American Pioneer Line); and

"It further appearing that the purported agreements referred to above have not been filed for approval under said section 15 nor approved thereunder and may have been carried out;

"It is ordered, That an investigation is hereby instituted to determine whether any of the persons named above have carried out before approval under said section 15 any agreements requiring such approval, in violation of said section 15; and

"It is further ordered, That all persons named above are made respondents in this proceeding which is to be set for hearing before an examiner from the Hearing Examiners' Office at a time and place to be announced; and

"It is further ordered, That a copy of this order be served on each of the respondents and published in the FEDERAL REGISTER."

Notice is hereby given that, in accordance with Rule 6(d) of the Board's rules of practice and procedure, 46 CFR § 201.94, a prehearing conference in this proceeding will be held before Examiner Edward C. Johnson on February 11, 1960, at 10 a.m., in Room 4519, New General Accounting Office Building, 441 G Street NW., Washington, D.C. Thereafter a public hearing will be scheduled at a date and place to be announced. Said hearing will be conducted in accordance with the above rules, and a recommended decision will be issued by the examiner.

All persons (including individuals, corporations, associations, firms, partnerships, and public bodies), having an interest in this proceeding and desiring to intervene therein, should notify the Secretary, Federal Maritime Board, promptly and file petitions for leave to intervene in accordance with Rule 5(n), 46 CFR § 201.74, of the above rules.

Dated: January 18, 1960.

By order of the Federal Maritime Board.

JAMES L. PIMPER,
Secretary.

[F.R. Doc. 60-570; Filed, Jan. 20, 1960;
8:46 a.m.]

[Docket No. 885]

UNAPPROVED SECTION 15 AGREEMENT; NORTH ATLANTIC/SPANISH TRADE

Notice of Investigation, of Hearing, and of Prehearing Conference

On January 7, 1960, the Federal Maritime Board entered the following order: "It appearing from information before the Board that an agreement within the contemplation of section 15 of the Shipping Act, 1916, (46 U.S.C. 814) fixing or regulating transportation rates or fares; controlling, regulating, preventing, or destroying competition; or in other manner providing for an exclusive, preferential, or cooperative working arrangement, may have been made during the period 1953 through 1957, affecting trade from the United States North Atlantic Coast to Spain by United States Lines Company and the North Atlantic Spanish Conference, and/or its member lines, namely:

Compania Espanola de Navegacion Maritima, S.A.,
Compania Trasatlantica Espanola, S.A. (Spanish Line),
Compagnie de Navigation Cyprien Fabre (Fabre Line),
American Export Lines, Inc., and
Home Lines, Inc., and

"It further appearing that the purported agreement referred to in the first paragraph above has not been filed for approval under said section 15 nor approved thereunder and may have been carried out;

"It is ordered, That an investigation is hereby instituted to determine whether any of the persons named above have carried out before approval under said section 15 any agreement requiring such approval, in violation of said section 15; and

"It is further ordered, That all persons named above are made respondents in this proceeding which is to be set for hearing before an examiner from the Hearing Examiners' Office at a time and place to be announced; and

"It is further ordered, That a copy of this order be served on each of the respondents and published in the FEDERAL REGISTER."

Notice is hereby given that, in accordance with Rule 6(d) of the Board's rules of practice and procedure, 46 CFR § 201.94, a prehearing conference in this proceeding will be held before Examiner Charles E. Morgan on February 12, 1960, at 10 a.m., in Room 4519, New General Accounting Office Building, 441 G Street NW., Washington, D.C. Thereafter a public hearing will be scheduled at a date and place to be announced. Said hearing will be conducted in accordance with the above rules, and a recommended decision will be issued by the examiner.

All persons (including individuals, corporations, associations, firms, partnerships, and public bodies), having an interest in this proceeding and desiring to intervene therein, should notify the Secretary, Federal Maritime Board, promptly and file petitions for leave to intervene in accordance with Rule 5(n), 46 CFR § 201.74, of the above rules.

Dated: January 18, 1960.

By order of the Federal Maritime Board.

JAMES L. PIMPER,
Secretary.

[F.R. Doc. 60-571; Filed, Jan. 20, 1960;
8:47 a.m.]

Office of the Secretary MAX LARRY BLUESTONE

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests as reported in the FEDERAL REGISTER during the last six months:

- A. Deletions: No change.
- B. Additions: Kennecott Copper Company, Taft Broadcasting Company, Group Securities Railroad Stock Shares.

This statement is made as of January 8, 1960.

Dated: January 8, 1960.

MAX LARRY BLUESTONE.

[F.R. Doc. 60-610; Filed, Jan. 20, 1960;
8:55 a.m.]

OFFICE OF CIVIL AND DEFENSE MOBILIZATION

MINOR S. JAMESON, JR.

Appointee's Statement of Changes in Business Interests

The following statement lists the names of concerns required by section

710(b) (6) of the Defense Production Act of 1950, as amended.

Savanna Creek Gas & Oil Limited.

This amends statement published August 13, 1959 (24 F.R. 6602).

Dated: January 12, 1960.

MINOR S. JAMESON, JR.

[F.R. Doc. 60-565; Filed, Jan. 20, 1960;
8:45 a.m.]

OTTO L. NELSON

Appointee's Statement of Changes in Business Interests

The following statement lists the names of concerns required by subsection 710(b) (6) of the Defense Production Act of 1950, as amended.

Addition: Director, Institute of International Education.

Deletion: Special Assistant to Secretary of Defense.

This amends statement published July 23, 1959 (24 F.R. 5926).

Dated: January 10, 1960.

Major Gen. OTTO L. NELSON,
(USA Ret.)

[F.R. Doc. 60-566; Filed, Jan. 20, 1960;
8:45 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-144]

CAROLINAS VIRGINIA NUCLEAR POWER ASSOCIATES, INC.

Notice of Hearing on Application for Construction Permit

Pursuant to the Atomic Energy Act of 1954, as amended, (hereinafter referred to as "the Act") and the regulations in Part 2, 10 CFR, rules of practice, notice is hereby given that a hearing will be held to consider the issuance of a construction permit for a 60,500 kilowatt (thermal) facility, to be used as a developmental nuclear steam generating plant to Carolinas Virginia Nuclear Power Associates, Inc., under Sections 104b and 185 of the Act. The hearing will commence at 10:30 a.m. on February 23, 1960, and will be held in the Auditorium of the AEC Headquarters, Germantown, Md. The application is available for public inspection at the AEC's Public Document Room, 1717 H Street NW., Washington, D.C.

The issues to be considered at the hearing will be the following:

1. Whether there is sufficient information to provide reasonable assurance that a utilization facility of the general type proposed in the application can be constructed and operated at the location specified therein without endangering the health and safety of the public;

2. Whether there is reasonable assurance that the technical information omitted from and required to complete the application will be supplied;

3. Whether the applicant is technically qualified to design and construct the proposed facility;

4. Whether the applicant is financially qualified to engage in the proposed activities in accordance with Commission regulations;

5. Whether the issuance of a construction permit will be inimical to the common defense and security or to the health and safety of the public.

Petitions for leave to intervene must be received in the Office of the Secretary, Atomic Energy Commission, Germantown, Md., or in the AEC's Public Document Room, 1717 H Street NW., Washington, D.C., not later than thirty days after publication of this notice in the FEDERAL REGISTER, or in the event of a postponement of the hearing date specified above at such time as the Presiding Officer may provide.

Answer to this notice shall be filed by Carolinas Virginia Nuclear Power Associates, Inc., pursuant to § 2.736 of the rules of practice on or before February 2, 1960. In the absence of good cause shown to the contrary, the AEC staff proposes to recommend at the hearing that the AEC issue a construction permit to the applicant substantially in the form set forth below.

Papers required to be filed with the AEC in this proceeding shall be filed by mailing to the Secretary, Atomic Energy Commission, Washington 25, D.C., or may be filed in person at the Office of the Secretary, Atomic Energy Commission, Germantown, Md., or at the AEC's Public Document Room, 1717 H Street NW., Washington, D.C. Pending further order of the Presiding Officer, parties shall file twenty copies of each such paper with the AEC and where service of papers is required on other parties shall serve five copies of each.

Pursuant to section 182b of the Act notice is hereby given that the report of the Advisory Committee on Reactor Safeguards in this matter is available for public inspection at the AEC's Public Document Room. Copies may be obtained by request addressed to the Atomic Energy Commission, Washington 25, D.C., Attention: Director, Division of Licensing and Regulation.

The Commission has designated Samuel W. Jensch as the Presiding Officer to conduct the hearing and to render a decision pursuant to § 2.751(a) of the Commission's rules of practice.

Dated at Germantown, Md., this 14th day of January 1960.

For the Atomic Energy Commission.

H. L. PRICE,
Director, Division of
Licensing and Regulation.

Pursuant to the Atomic Energy Act of 1954, as amended (hereinafter referred to as "the Act"), and Title 10, CFR Part 50, "Licensing of Production and Utilization Facilities", the Atomic Energy Commission (hereinafter referred to as "the Commission") hereby issues a construction permit to Carolinas Virginia Nuclear Power Associates, Inc., to construct a 60,500 kilowatt (thermal) vertical pressure tube nuclear reactor as a utilization facility.

This permit shall be deemed to contain and be subject to the conditions specified in

§§ 50.54 and 50.55 of said regulations; is subject to all applicable provisions of the Act, and rules, regulations and orders of the Commission now or hereafter in effect; and is subject to the additional conditions specified or incorporated below:

A. The earliest date for the completion of the facility is January 1, 1962. The latest date for the completion of the facility is December 31, 1962.

B. The site proposed for the facility is the location at Parr, in Fairfield County, South Carolina, described in the application.

C. This permit authorizes the applicant to construct the facility in accordance with the application and amendments thereto heretofore filed in this proceeding without further authorization.

D. If the applicant desires Commission approval of any particular technical specification (such as the use of Zircaloy for pressure tubes), prior to consideration of a license to operate, it may request that the Commission grant specific approval of any technical specification by appropriate amendment to this permit.

E. This permit is provisional to the extent that a license authorizing operation of the facility will not be issued by the Commission unless Carolinas Virginia Nuclear Power Associates, Inc., has submitted to the Commission (by amendment to the application) the complete Final Hazards Summary Report (portions of which may be submitted and evaluated from time to time) and the Commission has found that the final design provides reasonable assurance that the health and safety of the public will not be endangered by operation of the facility in accordance with the specified procedures.

F. Upon the filing of any additional information needed to bring the original application up to date, upon filing of proof of financial protection as required by Section 170 of the Act and the Commission's regulations, and upon a finding by the Commission that construction of the facility has been completed in accordance with the final design as approved by the Commission, and that the facility has been constructed and will operate in conformity with the application, as amended, and in conformity with the provisions of the Act and the rules and regulations of the Commission, and in the absence of any good cause shown to the Commission why the granting of a license would not be in accordance with the Act, the Commission will issue a Class 104 license to Carolinas Virginia Nuclear Power Associates, Inc., pursuant to section 104b of the Act, which license shall expire ten years from the date of issuance of this permit.

G. Pursuant to § 50.60 of the regulations in Title 10, Chapter 1 CFR Part 50, the Commission has allocated to Carolinas Virginia Nuclear Power Associates, Inc., for use in the operation of the reactor, 107 kilograms of uranium 235 contained in uranium in the isotopic ratios specified in Carolinas Virginia Nuclear Power Associates, Inc.'s application. Estimated schedules of special nuclear material transfers to Carolinas Virginia Nuclear Power Associates, Inc., and returns to the Commission are contained in Appendix "A" which is attached hereto. Shipments by the Commission to Carolinas Virginia Nuclear Power Associates, Inc., in accordance with column (2) in Appendix "A" will be conditioned upon Carolinas Virginia Nuclear Power Associates, Inc.'s return to the Commission of material substantially in accordance with column (3) of Appendix "A".

Date of issuance:

For the Atomic Energy Commission.

APPENDIX "A"

Estimated Schedule of Transfers of Special Nuclear Material from the Commission to Carolinas Virginia Nuclear Power Associates, Inc., and to the Commission from Carolinas Virginia Nuclear Power Associates, Inc.

(1) Date of transfer (fiscal year)	(2) Transfers from AEC to CVNPA (a), kgs. U-235	(3) Returns by CVNPA to AEC, kgs. U-235		(4) Net yearly distribution including cumulative losses, kgs. U-235	(5) Cumulative distribution including cumulative losses, kgs. U-235
		Recoverable cold scrap ¹	Spent hot fuel ²		
1961----	69,800	3,490	0	66,310	66,310
1962----	3,400	.170	0	3,230	69,540
1963----	13,500	.675	1,090	11,735	81,275
1964----	13,500	.675	5,450	7,375	88,650
1965----	13,500	.675	4,350	8,475	97,125
1966----	13,500	.675	5,450	7,375	104,500
1967----	6,700	.335	4,350	2,015	106,515
1968----	0	0	25,070	(25,070)	81,445
			45,760	48,145	

¹ 1.8 percent U-235.

² 0.7 percent U-235.

³ Inventory to be returned.

⁴ Fabrication and burnup losses.

[F.R. Doc. 60-627; Filed, Jan 19, 1960; 3:01 p.m.]

CIVIL AERONAUTICS BOARD

[Docket 10571]

NORTHERN CONSOLIDATED AIRLINES, INC.

Postponement of Prehearing Conference

In the matter of proposed fares of Northern Consolidated Airlines, Inc. Order of Investigation, E-13974.

The prehearing conference in the above-indicated proceeding now scheduled for January 25, 1960, is hereby postponed until January 27, 1960, at 10:00 a.m., e.s.t., in Room 701, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C. before Examiner Herbert K. Bryan.

Dated at Washington, D.C., January 15, 1960.

[SEAL]

FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 60-625; Filed, Jan. 20, 1960; 8:58 a.m.]

[Docket 10920]

NONPRIORITY MAIL RATE CASE

Notice of Hearing

In the matter of rates for the transportation by air of nonpriority mail in domestic and offshore service.

Notice is hereby given, pursuant to the Federal Aviation Act of 1958, as amended, particularly section 406 thereof, that the above-entitled proceeding is hereby assigned for hearing on February 1, 1960, at 10 a.m., in room 911, Universal

Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Ralph L. Wiser.

In this proceeding, the Board will fix and determine the fair and reasonable rates of compensation for the transportation by aircraft, on a nonpriority basis, of all classes of mail other than air mail and air parcel post, the facilities used and useful therefor, and the services connected therewith, and prescribe the method or methods for ascertaining such compensation. The rates will be applicable to the transportation by air of nonpriority mail between points within the 48 contiguous States, on the one hand, and Anchorage, Fairbanks, Ketchikan, Kodiak, Juneau, Yakutat, and Cordova, Alaska, Honolulu, Hawaii, and San Juan, Puerto Rico, on the other, and will be applicable to the 32 carriers named in order E-14559, dated October 16, 1959, to the extent they are authorized to carry mail within the above areas.

The issues are those specifically raised by the answers to the Board's order to show cause. For further details, interested persons are referred to the Board's order to show cause (order E-14559, dated October 16, 1959), the notices of objection and answers thereto, and the examiner's prehearing conference report and notices to the parties, all of which are on file in the Docket Section of the Civil Aeronautics Board.

Notice is further given that any person other than parties of record desiring to be heard in this proceeding shall file with the Board on or before January 28, 1960, a statement setting forth the issues of fact or law raised by this proceeding which he desires to controvert.

Dated at Washington, D.C., January 15, 1960.

[SEAL]

FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 60-626; Filed, Jan. 20, 1960; 8:58 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 13334; FCC 60M-104]

BAKERSFIELD BROADCASTING CO. (KBAK-TV)

Order for Prehearing Conference

In re application of Bakersfield Broadcasting Company (KBAK-TV), Bakersfield, California, Docket No. 13334, File No. BPCT-2699; for construction permit to change existing facilities.

A prehearing conference in the above-entitled proceeding will be held on Wednesday, January 27, 1960, beginning at 10:00 a.m., in the offices of the Commission, Washington, D.C. This conference is called pursuant to the provisions of § 1.111 of the Commission's rules and the matters to be considered are those specified in that section of the rules.

It is so ordered, This the 14th day of January 1960.

Released: January 15, 1960

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 60-614; Filed, Jan. 20, 1960;
8:56 a.m.]

[Docket Nos. 13341-13344; FCC 60M-105]

CREEK COUNTY BROADCASTING CO. ET AL.

Order Scheduling Prehearing Conference

In re applications of T. M. Raburn, Jr., tr/as Creek County Broadcasting Co., Sapulpa, Oklahoma, Docket No. 13341, File No. BP-11605; Tinker Area Broadcasting Co., Midwest City, Oklahoma, Docket No. 13342, File No. BP-12410; Sapulpa Broadcasting Corporation, Sapulpa, Oklahoma, Docket No. 13343, File No. BP-12595; M. W. Cooper, Midwest City, Oklahoma, Docket No. 13344, File No. BP-12887; for construction permits.

On the Hearing Examiner's own motion: *It is ordered,* This 15th day of January 1960, pursuant to the provisions of § 1.111 of the Commission's rules, that the parties or their counsel in the above-entitled proceeding are directed to appear for a prehearing conference at the offices of the Commission, Washington, D.C. at 10:00 a.m. on February 4, 1960.

In order to conserve time counsel are requested to confer a day or two beforehand with a view to reaching advance agreement upon such routine details as the manner of presentation, dates for exchange of exhibits and such other dates as may be deemed necessary. In view of the design of the prehearing conference procedure to encourage the formulation of agreements by the parties looking towards the elimination of unessentials, so that hearings may proceed with proper dispatch, it is requested that the parties or their counsel attend this conference prepared fully to discuss—and to agree upon—such matters as will conduce materially to the attainment of this objective.

Released: January 15, 1960.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 60-615; Filed, Jan. 20, 1960;
8:56 a.m.]

[Docket Nos. 13197, 13198; FCC 60M-103]

LAWRENCE W. FELT AND INTERNA- TIONAL GOOD MUSIC, INC.

Notice of Further Prehearing Conference

In re applications of Lawrence W. Felt, Carlsbad, California, Docket No. 13197, File No. BPH-2499; International Good Music, Inc., San Diego, California,

Docket No. 13198, File No. BPH-2695; for construction permits.

On the oral request of counsel for applicant Felt, a further prehearing conference will be held on Monday, January 18, 1960, at 9:30 a.m., in the offices of the Commission, Washington, D.C.

Dated: January 14, 1960.

Released: January 15, 1960.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 60-616; Filed, Jan. 20, 1960;
8:56 a.m.]

[Docket No. 13354]

JERRY L. HARDIN

Order To Show Cause

In the matter of Jerry L. Hardin, 1209 South Cherry, Centralia, Illinois, Docket No. 13354; order to show cause why there should not be revoked the license for citizens radio station 18W2625.

There being under consideration the matter of certain alleged violations of the Commission's rules in connection with the operation of the above-captioned station;

It appearing that, pursuant to § 1.61 of the Commission's rules, written notice of violation of the Commission's rules was served upon the above-named licensee as follows:

Official Notice of Violation alleging that on July 12, 1959, at approximately 11:13 a.m., e.s.t., the subject radio station was observed operating with excessive frequency deviation from the frequency 27055 kc in violation of § 19.33 of the Commission's rules.

It further appearing that the above-named licensee received said Official notice but did not make satisfactory reply thereto, whereupon the Commission, by letter dated October 12, 1959, and sent by Certified Mail—Return Receipt Requested (No. 7922729), brought this matter to the attention of the licensee and requested that such licensee respond to the Commission's letter within fifteen days from the date of its receipt stating the measures which had been taken, or were being taken, in order to bring the operation of the radio station into compliance with the Commission's rules, and warning the licensee that his failure to respond to such letter might result in the institution of proceedings for the revocation of the radio station license; and

It further appearing that receipt of the Commission's letter was acknowledged by the signature of the licensee's agent, Mrs. Jerry Hardin, on October 14, 1959, to a Post Office Department return receipt; and

It further appearing that although more than fifteen days have elapsed since the licensee's receipt of the Commission's letter, no response was made thereto; and

It further appearing that in view of the foregoing, the licensee has willfully violated § 1.61 of the Commission's rules;

It is ordered, This 15th day of January 1960, pursuant to section 312 (a) (4) and

(c) of the Communications Act of 1934, as amended, and section 0.291(b) (8) of the Commission's Statement of Delegations of Authority, that the said licensee show cause why the license for the above-captioned Radio Station should not be revoked and appear and give evidence in respect thereto at a hearing¹ to be held at a time and place to be specified by subsequent order; and

It is further ordered, That the Secretary send a copy of this order by Certified Mail—Return Receipt Requested to the said licensee.

Released: January 18, 1960.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 60-617; Filed, Jan. 20, 1960;
8:56 a.m.]

[Docket No. 13291; FCC 60M-107]

MILE HIGH STATIONS, INC.

Order Scheduling Prehearing Conference

In the matter of revocation of license of Mile High Stations, Inc., Docket No. 13291; for standard broadcast station KIMN, Denver, Colorado.

The Hearing Examiner having under consideration, (1) a "Petition for Stay of Show Cause Order and Proceedings Pursuant Thereto"² filed January 7, 1960, by the Respondent in the above-entitled matter, and (2) the record of a prehearing conference held this day, and

¹Section 1.62 of the Commission's rules provides that a licensee, in order to avail himself of the opportunity to be heard, shall, in person or by his attorney, file with the Commission, within thirty days of the receipt of the order to show cause, a written statement stating that he will appear at the hearing and present evidence on the matter specified in the order. In the event it would not be possible for respondent to appear for hearing in the proceeding if scheduled to be held in Washington, D.C., he should advise the Commission of the reasons for such inability within five days of the receipt of this order. If the licensee fails to file an appearance within the time specified, the right to a hearing shall be deemed to have been waived. Where a hearing is waived, a written statement in mitigation or justification may be submitted within thirty days of the receipt of the order to show cause. If such statement contains, with particularity, factual allegations denying or justifying the facts upon which the show cause order is based, the Hearing Examiner may call upon the submitting party to furnish additional information, and shall request all opposing parties to file an answer to the written statement and/or additional information. The record will then be closed and an initial decision issued on the basis of such procedure. Where a hearing is waived and no written statement has been filed within the thirty days of the receipt of the order to show cause, the allegations of fact contained in the order to show cause will be deemed as correct and the sanctions specified in the order to show cause will be invoked.

²The Hearing Examiner is proceeding under the theory that the pleading is basically a motion for continuance, and is therefore taking jurisdiction thereof.

It appearing that the petition requests a continuance of all proceedings in this matter until fifteen (15) days after the Commission passes upon a petition for reconsideration of its show cause order issued in this proceeding, and

It further appearing that for cause the petitioner alleges that the hearing "is believed to be illegal in its inception," that KIMN has been exposed to highly adverse publicity, that irreparable damage would result to KIMN (even though it ultimately would be vindicated), and that "the proceedings would inevitably cause a loss of revenue from advertising which would not only injure the station but would injure its ability to operate in the public interest," and

It further appearing that the factual elements alleged in the "Petition of Mile High Stations, Inc. for Reconsideration of Order to Show Cause and Request for Further Relief," filed simultaneously with the instant petition for stay and incorporated in the instant petition for stay by reference, were before the Commission at the time the Commission issued its Order to Show Cause (to the extent, at least, of the correspondence between the Commission and the Respondent—see Part II, "Statement of Facts," page 5, ff., of "Petition of Mile High Stations, Inc. for Reconsideration of Order to Show Cause and Request for Further Relief") and that, nevertheless, the Commission did issue its Order to Show Cause and, therefore, it must be inferred by the Hearing Examiner that the Commission was aware of the entire situation and was fully apprised of the law pertaining thereto, it would be presumptuous for the Hearing Examiner to bring these proceedings to a halt as requested, and

It further appearing that if the petitioner were successful in his plea for a stay, the same could happen in almost any case and that proceedings could be held in abeyance beyond the desirable limits of good administrative practice,

It is ordered, This 15th day of January 1960, that the aforesaid petition for stay is denied, and

It is further ordered, That a further rehearing conference will be held in this matter at 10:00 a.m., January 28, 1960, in the Commission's offices in Washington, D.C.

Released: January 15, 1960.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 60-618; Filed, Jan. 20, 1960;
8:56 a.m.]

[Docket No. 13351]

ROBERT L. OARE AND MARY
MORRIS OARE

Order to Show Cause

In the matter of Robert L. Oare and Mary Morris Oare, 2531 Lucille Drive, Fort Lauderdale, Florida, Docket No.

13351, order to show cause why there should not be revoked the license for radio station WJ2909 aboard the vessel "Bob-O-Lou II."

There being under consideration the matter of certain alleged violations of the Commission's rules in connection with the operation of the above-captioned station;

It appearing that pursuant to § 1.61 of the Commission's rules, written notice of violation of the Commission's rules was served upon the above-named licensee as follows:

Official Notice of Violation was mailed August 28, 1959, calling attention to the following violation, observed August 11, 1959. Failure to comply with § 8.366(b) (2) in that communication was attempted on 2638 kc without first establishing contact on 2182 kc.

It further appearing that the above-named licensee received said Official notice but did not make satisfactory reply thereto, whereupon the Commission, by letter dated October 28, 1959, and sent by Certified Mail, Return Receipt Requested (No. 735983), brought this matter to the attention of the licensee and requested that such licensee respond to the Commission's letter within fifteen days from the date of its receipt stating the measures which had been taken, or were being taken, in order to bring the operation of the radio station into compliance with the Commission's rules, and warning the licensee that his failure to respond to such letter might result in the institution of proceedings for the revocation of the radio station license; and

It further appearing, that receipt of the Commission's letter was acknowledged by the signature of the licensee's agent, G. Crombie on November 2, 1959, to a Post Office Department return receipt; and

It further appearing that although more than fifteen days have elapsed, since the licensee's receipt of the Commission's letter, no complete response was made thereto; and

It further appearing that in view of the foregoing, the licensee has willfully violated § 1.61 of the Commission's rules;

It is ordered, This 15th day of January 1960, pursuant to section 312 (a) (4) and (c) of the Communications Act of 1934, as amended, and section 0.291(b) (8) of the Commission's statement of delegations of authority, that the said licensee show cause why the license for the above-captioned radio station should not be revoked and appear and give evidence in respect thereto at a hearing¹ to be

¹ Section 1.62 of the Commission's rules provides that a licensee, in order to avail himself of the opportunity to be heard, shall, in person or by his attorney, file with the Commission, within thirty days of the receipt of the order to show cause, a written statement stating that he will appear at the hearing and present evidence on the matter specified in the order. In the event it would not be possible for respondent to appear for hearing in the proceeding if scheduled to be held in Washington, D.C., he should

held at a time and place to be specified by subsequent order; and

It is further ordered, That the Secretary send a copy of this order by Certified Mail—Return Receipt Requested to the said licensee.

Released: January 18, 1960.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 60-619; Filed, Jan. 20, 1960;
8:57 a.m.]

[Docket No. 12874; FCC 60M-102]

RADIO AMERICAS CORP. (WORA)

Order Continuing Hearing Conference

In re application of Radio Americas Corporation (WORA), Mayaguez, Puerto Rico, Docket No. 12874, File No. BP-11925; for construction permit.

The Hearing Examiner having under consideration the informal request for continuance of the date for the hearing conference filed on January 14, 1960, in the above-entitled proceeding by Radio Americas Corporation;

It appearing that all parties have consented to immediate consideration and grant of the said request and good cause for a grant thereof is present;

It is ordered, This 14th day of January 1960 that said request is granted and the hearing conference herein presently scheduled for January 18, 1960, is continued to January 27, 1960, commencing at 9:30 a.m. in the offices of the Commission at Washington, D.C.

Released: January 15, 1960.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F.R. Doc. 60-620; Filed, Jan. 20, 1960;
8:57 a.m.]

advise the Commission of the reasons for such inability within five days of the receipt of this order. If the licensee fails to file an appearance within the time specified, the right to a hearing shall be deemed to have been waived. Where a hearing is waived, a written statement in mitigation or justification may be submitted within thirty days of the receipt of the order to show cause. If such statement contains, with particularity, factual allegations denying or justifying the facts upon which the show cause order is based, the Hearing Examiner may call upon the submitting party to furnish additional information, and shall request all opposing parties to file an answer to the written statement and/or additional information. The record will then be closed and an initial decision issued on the basis of such procedure. Where a hearing is waived and no written statement has been filed within the thirty days of the receipt of the order to show cause, the allegations of fact contained in the order to show cause will be deemed as correct and the sanctions specified in the order to show cause will be invoked.

FEDERAL POWER COMMISSION

[Docket No. G-17849 etc.]

EL PASO NATURAL GAS CO. ET AL.

Notice of Postponement of Hearing

JANUARY 14, 1960.

In the matters of El Paso Natural Gas Company, Docket No. G-17849; Northern Natural Gas Company, Docket No. G-18110; The Atlantic Refining Company, et al., Docket Nos. G-17571, et al.

Upon consideration of the joint motion filed January 13, 1960, by Counsel for Sinclair Oil & Gas Company and Pioneer Production Corporation for postponement of the hearing now scheduled for January 19, 1960, in the above-designated matters;

The hearing now scheduled for January 19, 1960, is hereby postponed to a date to be hereafter fixed by further notice.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-580; Filed, Jan. 20, 1960;
8:48 a.m.]

[Docket No. G-19950]

PHILLIPS PETROLEUM CO.

Order For Hearings and Suspending Proposed Changes in Rates

JANUARY 13, 1960.

Issued October 23, 1959:

1. Change Date Tendered from "October 5, 1959" to "October 2, 1959".
2. Change Effective Date Unless Suspended from "November 5, 1959" to "November 2, 1959".
3. Change Rate Suspended Until from "April 5, 1960" to "April 2, 1960".

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-581; Filed, Jan. 20, 1960;
8:49 a.m.]

[Docket No. G-2506]

PANHANDLE EASTERN PIPE LINE CO.

Order Reopening Proceedings

JANUARY 14, 1960.

On February 10, 1959, the presiding examiner issued his initial decision in these proceedings disallowing Panhandle's proposed increased rates, and finding, inter alia, that Panhandle has not established by probative evidence that it is entitled to more for its own produced gas in its cost of service than an amount arrived at by the application of the rates reached by the traditional rate-base method. At the hearing, Panhandle presented evidence to support the use of a commodity value based on the weighted average of wellhead prices in the fields from which its gas is produced for the purpose of evaluating its own produced gas. Following issuance of the examiner's decision, Panhandle filed exceptions thereto, taking exception to the

examiner's findings on the commodity value issue as well as other issues. Panhandle also filed an alternative petition to reopen for the purpose of taking additional evidence with respect to one such other issue. Thereafter, on November 13, 1959, Panhandle filed a supplemental petition to reopen for the purpose of taking additional evidence on the issue of commodity value. In the present order, we are concerned only with this supplemental petition to reopen.

The commodity value method of evaluating its own production which Panhandle proposes in these proceedings is the same method which the Commission utilized in its Opinion No. 269, issued April 15, 1954, in Panhandle Eastern Pipe Line Co., Docket No. G-1116, et al. Upon review in that case, the Court of Appeals for the District of Columbia remanded to the Commission, stating that:

If the Commission contemplates increasing rates for the purpose of encouraging exploration and development, or the ownership by pipeline companies of their own producing facilities, it must see to it that the increase is in fact needed, and is no more than is needed, for the purpose.¹

The Court further stated that the "increase" referred to is an increase in rates above those which would result from use of the conventional rate-base method, and that such method must be used "at least as a point of departure" in determining just and reasonable rates under the Act. In denying use of the commodity value method in the present proceedings, the examiner found that Panhandle's evidence does not lend itself to the making of a determination of specific amounts to be awarded for exploration and development purposes beyond those actually expended, and that Panhandle has not shown that the increase is in fact needed, and is no more than is needed for the purpose.

In support of its supplemental petition to reopen, Panhandle makes the following allegations:

1. Panhandle plans to increase its peak-day sales capacity by approximately 500,000 Mcf within the next few years, the first phase, involving an increase of more than 300,000 Mcf, to be accomplished within the next year. Given the incentive of the commodity value for its own produced gas, such gas would be supplied to Panhandle's resale customers as part of this expansion program.

2. During the period between January 1, 1955, and September 1, 1959, Panhandle's gas supply was augmented by company-owned reserves approximating 773 billion cubic feet. During this same period, Panhandle produced and utilized 156 billion cubic feet of its own reserves. Panhandle's payments to independent producers for purchased gas during this period averaged 14.67 cents per Mcf as contrasted with the commodity value of 10.5 cents used in the present proceedings. The minimum saving to Panhandle's customers during this period from new production by Panhandle as dis-

tinguished from new purchases of like quantities of gas is approximately \$6.4 million; and in all likelihood, the saving is greater, since complete substitution of purchased gas for produced gas could not have been achieved at as low an average cost as that at which Panhandle actually attached purchased gas during this period.

3. There is a potential saving to Panhandle's customers from further utilization of Panhandle's own production in its proposed expansion program. To purchase new gas supplies of consequence from the general areas of Panhandle's sources of supply will cost between 17 and 23 cents per Mcf, and new gas supplies from Trunkline's general areas of supply will cost between 17 and 24 cents per Mcf. Assuming an average cost of only 18.5 cents for new purchased gas as against the overall commodity value of approximately 12.5 cents, reflected in Panhandle's latest rate filing, Panhandle's customers would save 6 cents per Mcf on every Mcf of gas produced rather than purchased in connection with the expansion program.

4. Such tangible evidence of substantial savings and other benefits to the public from commodity evaluation of gas production in connection with a concrete expansion program has not previously been available for presentation in this case.

5. Experience has confirmed not only the need for, but also the increasing cost of, finding new gas reserves; and increasing sums of money are therefore required merely to maintain current levels of production. The facts as to such costs confirm the propriety and reasonableness of an average commodity value of 10.5 cents for Panhandle's own produced gas in the present proceedings, and upon reopening Panhandle is prepared to show the same with appropriate supporting data.

Objections, by way of answer to Panhandle's supplemental petition to reopen, have been filed by the City of Detroit, Michigan, the County of Wayne, Michigan, Michigan Consolidated Gas Company, the Michigan Public Service Commission, and this Commission's staff. On the other hand, filings in support of Panhandle's supplemental petition have been made by the Public Service Commission of Indiana, the Public Utilities Commission of Ohio, the State Corporation Commission of Kansas, and the following distributing company customers of Panhandle: Battle Creek Gas Company, Central Illinois Light Company, Central Illinois Public Service Company, Illinois Power Company, Michigan Gas Utilities Company, Missouri Power & Light Company, Missouri Utilities Company, Ohio Gas Company, and Toledo Edison Company. In addition, letters supporting reopening have been received from Central Indiana Gas Company, Citizens Gas and Coke Utility, Greenfield Gas Company, Inc., Indiana Gas Distribution Corp., Indiana Gas & Water Company, Inc., and Kokomo Gas and Fuel Company, which are also distributing company customers of Panhandle.

The response of the state commissions and Panhandle's distributing company

¹ City of Detroit v. Panhandle Eastern Pipe Line Co., 230 F.2d 810 (C.A.D.C. 1955), cert. denied 353 U.S. 829, rehearing denied 352 U.S. 919.

customers in support of the petition to reopen is impressive, and is indicative of the public interest in this issue. It is based upon a desire to secure for the consumers of Panhandle's gas such savings as Panhandle alleges will result from the use of commodity value for its own produced gas, as well as to encourage the effective development of all available gas supplies and thereby assure a continuing adequate supply of gas to meet increasing demands. To this end the Commission is urged to reopen the proceedings to consider such additional evidence as Panhandle proposes to introduce.

Those opposing reopening contend that the evidence which Panhandle seeks to introduce pertains to a proposed future expansion and to operations subsequent to the test year; that such evidence is unrelated to these proceedings and the determination of just and reasonable rates for the locked-in period; that the record is adequate to a disposition of the exceptions to the examiner's decision; that Panhandle has had ample opportunity to introduce evidence to meet the test of the City of Detroit case in these proceedings and will have further opportunity to justify the use of commodity value in more recent rate proceedings now pending before the Commission; that Panhandle should not be permitted to receive more than the cost of its production for this prior period; and that the commodity value issue should properly be considered in a proceeding where rates for the future are to be determined. It is also contended that to reopen these proceedings will serve only to confuse the record and further delay final disposition of this case.

Considering the arguments for and against reopening, we are of the opinion that in the circumstances of this case the public interest will be best served by reopening the proceedings for the limited purpose proposed by Panhandle in its supplemental petition. As we have noted, the extent of the public interest in such a reopening is reflected by the broad response in support thereof from the state commissions and distributing company customers of Panhandle. The potential dollar impact on natural gas consumers of our decision on this commodity value issue is clear. Panhandle has indicated that without the incentive to develop its own production for its interstate markets which would be provided by use of the commodity value method of evaluating that gas for rate making purposes, it will forgo further development of such production and will instead purchase the gas needed for its proposed expansion program. The necessary result of using purchased gas instead of its own production to supply its interstate markets, Panhandle contends, will be an increase in the cost of gas to its interstate customers. It is Panhandle's position, however, that it can demonstrate the propriety and reasonableness of using a 10.5 cent per Mcf commodity value for its own produced gas in this case, and to this end it proposes upon reopening to show (1) the savings to its customers which will accrue from use of the commodity value, and (2) the present cost of exploring for and

developing the annual volumes of production involved in this case.

In view of the possible dollar savings to gas consumers and the incentive to continuing development of all available gas supplies, and considering the fundamental importance of the commodity value issue in determining just and reasonable rates for integrated pipeline companies with their own gas production, as well as its importance in the closely related question of determining just and reasonable rates for independent gas producers, we believe that this issue should be decided upon as complete a record as possible and that consideration should be given to the additional evidence which Panhandle proposes to introduce. It is not merely because of Panhandle's desire to submit more evidence at this late date, but because most of Panhandle's customers and the State commissions having jurisdiction believe such reopening to be in the interest of ultimate consumers, that we are taking this action. Reopening will not only give Panhandle an opportunity to introduce this additional evidence, it will also provide us an opportunity to consider the augmented record in this case at the same time we are considering the landmark Phillips Petroleum Co. independent producer rate case, Docket No. G-1148, et al., which is also before us now for decision. However, we recognize the need for bringing these proceedings to a speedy conclusion and, accordingly, the reopening herein ordered shall be subject to the conditions set forth below.

The Commission finds:

(1) The public interest requires that the proceedings herein be reopened for the limited purpose of taking additional evidence on the issue of commodity value as proposed by Panhandle in its supplementary petition to reopen filed November 13, 1959.

(2) The public interest further requires that the reopening herein ordered be subject to the terms and conditions set forth below.

The Commission orders:

(A) The proceedings in Docket No. G-2506 are hereby reopened for the limited purpose of taking additional evidence on the issue of commodity value as proposed by Panhandle in its supplementary petition to reopen filed November 13, 1959.

(B) Further hearing before the presiding examiner upon the reopening herein ordered is hereby set for February 16, 1960, at 10 o'clock a.m. in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C. for the purpose of taking such additional evidence on the issue of commodity value.

(C) Panhandle shall prepare the additional evidence which it proposes to introduce at such further hearing in the form of written testimony, and shall serve such prepared written testimony on all of the parties to these proceedings and on the presiding examiner two weeks prior to the date of said hearing.

(D) At the further hearing upon reopening as herein ordered, Panhandle shall introduce its prepared written testimony in evidence, after which other

parties so desiring shall proceed with cross examination and Panhandle shall follow with redirect examination, all as expeditiously as possible and without recess, and the hearing shall thereupon be concluded.

(E) Panhandle shall have an opportunity within 10 days after the conclusion of said hearing, to file a brief covering said supplemental hearing, and all other parties shall have an opportunity to file answering briefs within 5 days after the filing of Panhandle's brief.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-582; Filed, Jan. 20, 1960; 8:49 a.m.]

[Docket No. G-18877 etc.]

TENNESSEE GAS TRANSMISSION CO. ET AL.

Order Postponing Hearing

JANUARY 14, 1960.

In the matters of Tennessee Gas Transmission Company, Docket Nos. G-18877, G-19042, G-16843 and G-15826; Pennsylvania & Southern Gas Company, Docket No. G-18140; Tennessee Natural Gas Lines Inc., Docket No. G-19302; Alabama-Tennessee Natural Gas Company, Docket No. G-19132; Honesdale Gas Company, Docket No. G-19021; Monson Gas Company, Docket No. G-17756.

By our order of October 7, 1959, hearing on the above-designated matters, consisting mainly of Tennessee Gas Transmission Company's (Tennessee) latest expansion application, was commenced on October 26, 1959 and lasted until October 28, 1959 whereupon the Presiding Examiner ordered a recess. Said hearing was resumed on November 30, 1959 and continued until December 1, 1959, at which time the Presiding Examiner, upon considering the requests of the participating parties, recessed the hearing until December 9, 1959, for the purpose of allowing all of said parties sufficient time to prepare for cross-examination of the remaining witnesses. Upon consideration of an appeal filed by The Manufacturers Light and Heat Company, The Ohio Fuel Gas Company and United Fuel Gas Company, interveners herein, from the Presiding Examiner's ruling requiring recommencement of cross-examination on the aforementioned date, we granted a continuance of the hearing until January 18, 1960. We now have before us a letter request filed on December 30, 1959, by Tennessee for further continuance of the hearing by reason of conflicting hearings making it extremely difficult for its witnesses and counsel to be available or properly prepared on January 18, 1960.

Notwithstanding the fact that we conclude from the foregoing that sufficient time has been granted to all participating parties for their proper preparation of the matters and issues presented in this consolidated proceeding, it nevertheless appears that the instant circum-

stances as set forth in Tennessee's letter warrants a further but final continuance. We consider any further continuance in this proceeding, other than herein ordered, to be inconsistent with the proper and timely administration of our functions under the Natural Gas Act and detrimental to the public interest.

The Commission finds:

(1) The request of Tennessee Gas Transmission Company for a continuance is both reasonable and necessary.

(2) Further postponement, other than herein ordered, would not be in the public interest.

The Commission orders: The hearing now scheduled for January 18, 1960, be and is hereby postponed to February 15, 1960, at 10:00 a.m., e.s.t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-583; Filed, Jan. 20, 1960;
8:49 a.m.]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Area 250]

MASSACHUSETTS

Declaration of Disaster Area

Whereas, it has been reported that during the month of December, 1959, because of the effects of certain disasters, damage resulted to residences and business property located in certain areas in the State of Massachusetts;

Whereas, the Small Business Administration has investigated and has received other reports of investigations of conditions in the areas affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such areas constitute a catastrophe within the purview of the Small Business Act.

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b) of the Small Business Act may be received and considered by the Office below indicated from persons or firms whose property situated in the following County (including any areas adjacent to said County) suffered damage or destruction as a result of the catastrophe hereinafter referred to:

County: Plymouth (Winds and high tides occurring on or about December 29 and 30, 1959).

Office: Small Business Administration Regional Office, Sheraton Building, 470 Atlantic Avenue, Boston, Mass.

2. No special field offices will be established at this time.

3. Applications for disaster loans under the authority of this Declaration will

not be accepted subsequent to July 31, 1960.

Dated: January 2, 1960.

PHILIP McCALLUM,
Administrator.

[F.R. Doc. 60-595; Filed, Jan. 20, 1960;
8:52 a.m.]

[Declaration of Disaster Area 251]

MINNESOTA

Declaration of Disaster Area

Whereas, it has been reported that during the month of December, 1959, because of the effects of certain disasters, damage resulted to residences and business property located in certain areas in the State of Minnesota;

Whereas, the Small Business Administration has investigated and has received other reports of investigations of conditions in the areas affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such areas constitute a catastrophe within the purview of the Small Business Act.

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b) of the Small Business Act may be received and considered by the Office below indicated from persons or firms whose property situated in the following Counties (including any areas adjacent to said Counties) suffered damage or destruction as a result of the catastrophe hereinafter referred to:

Counties: St. Louis and Lake (winds occurring on or about December 28, 1959).

Office: Small Business Administration Regional Office, Lewis Building, 603 Second Avenue, South, Minneapolis 2, Minn.

2. No special field offices will be established at this time.

3. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to July 31, 1960.

Dated: January 4, 1960.

PHILIP McCALLUM,
Administrator.

[F.R. Doc. 60-596; Filed, Jan. 20, 1960;
8:52 a.m.]

[Declaration of Disaster Area 252]

KENTUCKY

Declaration of Disaster Area

Whereas, it has been reported that during the month of December, 1959, because of the effects of certain disasters, damage resulted to residences and business property located in certain areas in the State of Kentucky;

Whereas, the Small Business Administration has investigated and has re-

ceived other reports of investigations of conditions in the areas affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such areas constitute a catastrophe within the purview of the Small Business Act.

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b) of the Small Business Act may be received and considered by the Offices below indicated from persons or firms whose property situated in the following County (including any areas adjacent to said County) suffered damage or destruction as a result of the catastrophe hereinafter referred to:

County: Gallatin (Explosion occurring on or about December 25, 1959).

Offices:

Small Business Administration Regional Office, Standard Building, Fourth Floor, 1370 Ontario Street, Cleveland 13, Ohio.

Small Business Administration Branch Office, Commonwealth Building, Room 1900, Fourth and Broadway, Louisville 2, Ky.

2. No special field offices will be established at this time.

3. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to July 31, 1960.

Dated: January 11, 1960.

PHILIP McCALLUM,
Administrator.

[F.R. Doc. 60-597; Filed, Jan. 20, 1960;
8:52 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-3865]

SKIATRON ELECTRONICS AND TELEVISION CORP.

Order Summarily Suspending Trading

JANUARY 15, 1960.

The common stock, par value 10 cents per share of Skiatron Electronics and Television Corporation, being listed and registered on the American Stock Exchange, a national securities exchange; and

The Commission being of the opinion that the public interest requires the summary suspension of trading in such security on such Exchange and that such action is necessary and appropriate for the protection of investors; and

The Commission being of the opinion further that such suspension is necessary in order to prevent fraudulent, deceptive or manipulative acts or practices, with the result that it will be unlawful under section 15(c)(2) of the Securities Exchange Act of 1934 and the Commission's Rule 15c2-2 thereunder for any broker or dealer to make use of the mails or of any means or instrumentality of interstate commerce to effect any

transaction in, or to induce or attempt to induce the purchase or sale of such security, otherwise than on a national securities exchange;

It is ordered, Pursuant to section 19(a) (4) of the Securities Exchange Act of 1934 that trading in said security on the American Stock Exchange be summarily suspended in order to prevent fraudulent, deceptive or manipulative acts or practices, this order to be effective for a period of ten (10) days, from January 17 to January 26, 1960, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F.R. Doc. 60-599; Filed, Jan. 20, 1960;
8:52 a.m.]

[File No. 24D-1298]

COMMONWEALTH MINING COMPANY OF SOUTH DAKOTA

Order Temporarily Suspending Exemption, Statement of Reasons Therefor, and Notice of Opportunity for Hearing

JANUARY 15, 1960.

I. Commonwealth Mining Company of South Dakota (issuer), a South Dakota corporation, P.O. Box 892, Sioux Falls, South Dakota, filed with the Commission on June 17, 1954, a notification and offering circular and subsequently filed amendments thereto relating to a proposed public offering of 560,310 shares of common stock, 50¢ par value at 50¢ per share, for an aggregate of \$280,155, for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3(b) thereof and Regulation A promulgated thereunder; and

II. The Commission has reasonable cause to believe that the terms and conditions of Regulation A have not been complied with in that the issuer has failed to file a report on Form 2-A, as required by Rule 224 of Regulation A, despite requests of the Commission's staff for such filing.

III. It is ordered, Pursuant to Rule 223(a) of the general rules and regulations under the Securities Act of 1933, as amended, that the exemption under Regulation A be, and it hereby is, temporarily suspended.

Notice is hereby given, that any person having any interest in the matter may file with the Secretary of the Commission a written request for hearing; that within twenty days after receipt of such request the Commission will, or any time upon its own motion, may set the matter down for hearing at a place to be designated by the Commission for the purpose of determining whether this order of suspension should be vacated or made permanent, without prejudice, however, to the consideration and presentation of additional matters at the hearing; and that notice of the time and place for

said hearing will be promptly given by the Commission.

By the Commission.

[SEAL] ORVAL S. DuBOIS,
Secretary.

[F.R. Doc. 60-600; Filed, Jan. 20, 1960;
8:53 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

JANUARY 18, 1960.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 35959: *Substituted service—Erie for Midwest Haulers, Inc.* Filed by Midwest Haulers, Inc., Agent (No. 19), for interested carriers. Rates on property loaded in highway trailers and transported on railroad flat cars between Jersey City, N.J., on the one hand, and Chicago, Ill., and Hammond, Ind., on the other.

Grounds for relief: Motor-truck competition.

FSA No. 35960: *Substituted service—CRI&P for Paul Eaton doing business as Eaton Truck Line.* Filed by Paul Eaton doing business as Eaton Truck Line (No. 1), for interested carriers. Rates on property loaded in highway trailers and transported on railroad flat cars between St. Louis, Mo., and Kansas City, Mo., on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief: Motor-truck competition.

FSA No. 35961: *Substituted service—CRI&P for Commercial Freight Lines, Inc.* Filed by Commercial Freight Lines, Inc. (No. 1), for itself, and other interested carriers. Rates on property loaded in highway trailers and transported on railroad flat cars between Chicago, Ill., and Kansas City (Armourdale), Kan., on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief: Motor-truck competition.

FSA No. 35962: *Woodpulp from Fernandina, Fla., to Carneys Point, N.J.* Filed by O. W. South, Jr., Agent (SFA No. A3893), for interested rail carriers. Rates on woodpulp, not powdered, NOIBN, in rolls, in carloads from Fernandina, Fla., to Carneys Point, N.J.

Grounds for relief: Barge-truck competition.

Tariff: Supplement 81 to Southern Freight Association tariff I.C.C. 1555.

FSA No. 35963: *Citrus fruit from Florida Points to southern territory.* Filed by O. W. South, Jr., Agent (SFA No. A3892), for interested rail carriers. Rates on fresh citrus fruit, in straight or

mixed, or in mixed carloads with fruits or vegetables from points in the Florida Peninsula to points in southern territory.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 37 to Southern Freight Association tariff I.C.C. S-5.

By the Commission.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 60-590; Filed, Jan. 20, 1960;
8:51 a.m.]

[Taylor's I.C.C. Order No. 112-A, Rev. S.O. No. 562]

ST. LOUIS-SAN FRANCISCO RAILWAY CO.

Rerouting of Traffic; Vacation of Order

Upon further consideration of Taylor's I.C.C. Order No. 112 (the St. Louis-San Francisco Railway Company) and good cause appearing therefor:

It is ordered, That:

(a) Taylor's I.C.C. Order No. 112, be, and it is hereby vacated and set aside.

(b) *Effective date.* This order shall become effective at 9:00 a.m., January 14, 1960.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement and by filing it with the Director, Office of the Federal Register.

Issued at Washington, D.C., January 14, 1960.

INTERSTATE COMMERCE
COMMISSION,
CHARLES W. TAYLOR,
Agent.

[F.R. Doc. 60-592; Filed, Jan. 20, 1960;
8:51 a.m.]

[Notice No. 251]

MOTOR CARRIER TRANSFER PROCEEDINGS

JANUARY 18, 1960.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC 62763. By order of January 14, 1960, the Transfer Board approved the transfer to Theodore L. Freeman and William L. Campbell, a partnership, doing business as Brookings Livestock & Trucking Co., Brookings, Oregon, of Certificate in No. MC 116327, issued July 3, 1957, to E. K. Griffith, H. B. Hughes, Jr., and K. R. Hartman, a partnership, doing business as Sequoia Trucking, Richmond, California, authorizing the transportation of: Resin glues, in bulk, in tank vehicles, from South San Francisco, Calif., to points in Curry and Coos Counties, Oreg. William P. Ellis, Attorney at Law, 1121 Equitable Building, Portland, Oregon.

No. MC-FC 62775. By order of January 14, 1960, the Transfer Board approved the transfer to Michael Albano, Brooklyn, N.Y.; of Certificate in No. MC 32024, issued November 6, 1950, to Jessie Burman, doing business as B and M Trucking, Brooklyn, N.Y.; authorizing the transportation of: Paper, printed matter, lithographing material, metal caps, and paper boxes, from New York, N.Y.; to specified points in New Jersey. Leon Leeder, 150 Broadway, New York, N.Y.; for applicants.

No. MC-FC 62782. By order of January 14, 1960, the Transfer Board approved the transfer to Brookes of Cortland, Inc., Cortland, N.Y.; of Certificates

in Nos MC 39334 and MC 39334 Sub 2, issued July 3, 1943, and December 13, 1945, respectively, to Max J. Brookes, doing business as Brookes of Cortland, Cortland, N.Y.; authorizing the transportation of: Household goods, between specified points in New York, on the one hand, and, on the other points in Connecticut, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Virginia, and the District of Columbia. Leland B. Taylor, 15 Court Street, Cortland, N.Y., for applicants.

[SEAL]

HAROLD D. McCoy,
Secretary.[F.R. Doc. 60-591; Filed, Jan. 20, 1960;
8:51 a.m.]

CUMULATIVE CODIFICATION GUIDE—JANUARY

A numerical list of parts of the Code of Federal Regulations affected by documents published to date during January. Proposed rules, as opposed to final actions, are identified as such.

3 CFR	Page	7 CFR—Continued	Page	14 CFR	Page
<i>Proclamations:</i>		946.....	75	40.....	167, 168
3330.....	139	948-949.....	75	41.....	167, 169
3331.....	401	952.....	75	42.....	167, 170
<i>Executive Orders:</i>		953.....	5, 166, 239, 376	60.....	334, 376
Oct. 30, 1916.....	78	954.....	75	507.....	76, 334-336, 377, 378, 473
10857.....	33	956.....	75	600.....	105, 107, 108, 171-174, 336, 378, 430
10858.....	373	961.....	472	601.....	107-109, 172-174, 336-339, 378, 430
5 CFR		963.....	75, 76	602.....	174
6.....	105, 217, 425	965-968.....	75	608.....	108, 109, 217, 336-339
9.....	401	971-972.....	75	609.....	175, 379
25.....	425	974-978.....	75	610.....	474
325.....	217	980.....	75	620.....	339
601.....	473	982.....	75	1209.....	403
6 CFR		985-988.....	75	<i>Proposed rules:</i>	
6.....	233	991.....	75	60.....	391
7.....	233	994-995.....	75	376.....	389
341.....	429	998.....	75	406.....	122
351.....	35, 76	1000.....	75	507.....	204, 220, 250
354.....	76	1001.....	429	514.....	204
421.....	1, 381	1002.....	75	600.....	63,
427.....	3	1004-1005.....	75	82, 84, 122, 220, 221, 250, 516, 517	
474.....	35	1008-1009.....	75	601.....	62, 63, 83, 84,
482.....	381	1011-1014.....	75	122, 220-222, 250, 251, 516, 517	
485.....	213	1016.....	75	602.....	85, 86, 123, 124, 222, 518
7 CFR		1017.....	5	16 CFR	
52.....	457, 461	1018.....	75	13.....	6, 35-37, 77, 166, 239, 240,
354.....	375	1023.....	75	282-284, 342, 376, 431, 432, 477, 478	
401.....	427	1069.....	249	17 CFR	
722.....	214, 237	1109.....	105	<i>Proposed rules:</i>	
723.....	461	<i>Proposed rules:</i>		230.....	151
725.....	428	352.....	312	270.....	252
727.....	73	728.....	218, 219	19 CFR	
729.....	375	900-1027.....	245	1.....	141
730.....	462	913.....	149	9.....	6
850.....	329, 331, 332	927.....	293	16.....	78, 243
877.....	214	942.....	115	22.....	142
903.....	75	946.....	44	23.....	143
905-908.....	75	947.....	293	20 CFR	
911-913.....	75	954.....	500	237.....	479
914.....	5, 34, 163, 238, 375, 428	958.....	353	<i>Proposed rules:</i>	
916-919.....	75	960.....	183	401.....	18
921.....	75	970.....	59	21 CFR	
923.....	75	973.....	311	9.....	110, 143
924.....	75, 463	989.....	515	120.....	241, 404
925.....	75	1002.....	9	121.....	343, 404
928-932.....	75	1009.....	9	141a.....	242
933.....	139, 141, 164, 165	9 CFR		141c.....	37
935.....	75	<i>Proposed rules:</i>		146a.....	242
936.....	403	131.....	151	146c.....	37, 243
937.....	238	12 CFR		146e.....	243
941-944.....	75	222.....	281		

21 CFR—Continued	Page	33 CFR	Page	43 CFR—Continued	Page
<i>Proposed rules:</i>		92.....	110	<i>Public land orders—Continued</i>	
120.....	121, 317	203.....	78	2039.....	78
121.....	61, 249	207.....	388	2040.....	111
23 CFR		36 CFR		2041.....	111
20.....	218	<i>Proposed rules:</i>		2042.....	244
24 CFR		7.....	389	2043.....	409
300.....	284	38 CFR		46 CFR	
320.....	284	3.....	345, 348, 409	10.....	145
25 CFR		39 CFR		70.....	149
<i>Proposed rules:</i>		43.....	499	72.....	146
221.....	388	41 CFR		73.....	146
26 (1939) CFR		<i>Proposed rules:</i>		110.....	146
<i>Proposed rules:</i>		50-202.....	411	157.....	149
29.....	350	42 CFR		172.....	8
39.....	350	21.....	43	187.....	149
26 (1954) CFR		33.....	43	<i>Proposed rules:</i>	
1.....	39-41, 381, 482	51.....	43	201-380.....	60
301.....	78, 143, 343	53.....	43	222.....	359
504.....	145	55.....	43	47 CFR	
<i>Proposed rules:</i>		71.....	43	2.....	7
1.....	178, 220, 410	72.....	43	6.....	349
48.....	43, 44, 516	73.....	43	11.....	7, 79
280.....	111	<i>Proposed rules:</i>		16.....	79
29 CFR		55.....	435	20.....	7
403.....	433	73.....	61	21.....	349
779.....	497	43 CFR		<i>Proposed rules:</i>	
<i>Proposed rules:</i>		70.....	500	1.....	286
614.....	412	71.....	500	3.....	17, 286
615.....	412	191.....	500	21.....	292
31 CFR		193.....	500	49 CFR	
321.....	407	200.....	500	43.....	434
330.....	407	<i>Proposed rules:</i>		73.....	217
339.....	407	160.....	81	95.....	80, 81
32 CFR		161.....	81	120.....	410
56.....	497	<i>Public land orders:</i>		145.....	178
206.....	211	27.....	409	186.....	178
208.....	211	28.....	409	<i>Proposed rules:</i>	
517.....	42	76.....	409	10.....	63
		101.....	409	170.....	86
		2038.....	7	50 CFR	
				6.....	284
				34.....	285

